**Grove Valve and Regulator Company *and* International Association of Machinists and Aerospace Workers, AFL-CIO, District Lodge No. 115, Local Lodge No. 801 *and* United Steelworkers of America, AFL-CIO-CLC *and* Sherrie Sanford.** Cases 32-CA-2915, 32-CA-3004, 32-RC-1085, 32-CA-3034, 32-RC-1095, and 32-CA-3069

June 21, 1982

## DECISION, ORDER, AND DIRECTION OF SECOND ELECTION

BY CHAIRMAN VAN DE WATER AND MEMBERS FANNING AND HUNTER

On September 24, 1981, Administrative Law Judge Earldean V. S. Robbins issued the attached Decision in this proceeding. Thereafter, the General Counsel filed exceptions and a supporting brief, and Respondent filed a brief in opposition to the General Counsel's exceptions.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings, recommendations,[1] and conclusions[2] of the Administrative Law Judge and to adopt her recommended Order.

In her Decision, the Administrative Law Judge made findings of fact with respect to preelection speeches made to employees by Respondent's officials Dodson, Watson, and MacLean, but failed to determine whether such speeches violated Section 8(a)(1) of the Act, as alleged. We find merit in the General Counsel's exception to the Administrative Law Judge's failure to find that certain portions of these speeches violated the Act.

The Administrative Law Judge's factual findings regarding the speeches are undisputed. Thus, Dodson told the employees, in part:

> Some of you have said all this talk about strikes and economic striker replacements is just so much talk. I have heard that the unions are telling you that any strike that takes place would not be an economic strike. They have done you a terrible disservice if you believe that. Of the thousands of strikes that take place, almost all—my guess is more than 90 percent—are economic. Don't buy that rip-off. Only a fool would believe their lies. It is you and your family who could be caught up in that kind of mess. Let me assure you, I have been directed by my boss to run this plant regardless of what happens. And I'll do it.

Watson, in his speech, emphasized that:

> Wanting a union if you were paid minimum wage is one thing, but that is not the case here. I must emphasize this point because I think the risk of a strike and the risk of losing your jobs, or the plant moving, are especially real in our case because our wages and benefits are so good already.

Finally, in his speech MacLean stated that if the Union won the election and made excessive bargaining demands the Company would have to consider trading off things that the employees currently enjoyed. He then added that "even then we could be forced to close down, sell out to strangers or whatever. I don't think it's worth the risk."

We find that the above statements unlawfully emphasized the inevitability of strikes and threatened the loss of strikers' jobs and plant closure. Moreover, these statements were made in the context of other conduct violative of Section 8(a)(1), including tours of prospective striker replacements through the plant, campaign literature concerning the effects of unionization, and other remarks made to employees by supervisors, through which Respondent also emphasized the inevitability of strikes and threatened employees with loss of jobs and plant closure. Accordingly, we find that, by the portions of the speeches of Dodson, Watson, and MacLean set forth above, Respondent violated Section 8(a)(1) of the Act.[3]

## ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the Respondent, Grove Valve and Regulator Company, Sparks, Nevada, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order.

IT IS FURTHER ORDERED that the election held in Cases 32-RC-1095 and 32-RC-1085 be, and it hereby is, set aside, and that said cases be, and they hereby are, remanded to the Regional Director for

[1] In the absence of exceptions thereto, we adopt, *pro forma*, the Administrative Law Judge's recommendations that Steelworkers Objections 1, 5, and 7 and Machinists Objections 3, 6, and 8 be sustained, and that the election conducted on August 28, 1980, be set aside and a second election be directed.

[2] No exception has been filed with respect to the Administrative Law Judge's findings and conclusions concerning the discharge of employee Sherrie Sanford.

[3] Chairman Van de Water would not find portions of the speeches set forth above violative of Sec. 8(a)(1) of the Act.

Region 32 to conduct a new election when he deems the circumstances permit the free choice of a bargaining representative.

[Direction of Second Election and *Excelsior* footnote omitted from publication.]

## DECISION

### STATEMENT OF THE CASE

EARLDEAN V. S. ROBBINS, Administrative Law Judge: This matter was heard before me in Reno, Nevada, on June 1, 2, and 3, 1981. The charges in Cases 32-CA-2915 and 32-CA-3004 were filed by International Association of Machinists and Aerospace Workers, AFL-CIO, District Lodge No. 115, Local Lodge No. 801, herein called the Machinists, on July 29 and August 22, 1980, respectively, and copies thereof were served on Grove Valve and Regulator Company, herein called Respondent, on July 29, 1980, and August 25, 1980. The charge in Case 32-CA-3034 was filed by United Steelworkers of America, AFL-CIO-CLC, herein called the Steelworkers, on September 3, 1980, and served on Respondent on September 4, 1980. The complaint in Case 32-CA-2915, which issued on September 16, 1980, alleges that Respondent violated Section 8(a)(1) of the National Labor Relations Act, as amended, herein called the Act. The charge in Case 32-CA-3069 was filed by Sherrie Sanford, an individual, on September 17, 1980, and served on Respondent on September 25, 1980. The consolidated complaint in Cases 32-CA-3004, 32-CA-3034, and 32-CA-3069, which issued on October 31, 1980, alleges that Respondent violated Section 8(a)(1) and (3) of the Act.

The petition in Case 32-RC-1085 was filed by the Machinists on June 11, 1980, and the petition in Case 32-RC-1095 was filed by the Steelworkers on June 7, 1980. On June 23, 1980, an order issued consolidating Cases 32-RC-1095 and 32-RC-1085. Pursuant to a Stipulation for Certification Upon Consent Election approved by the Regional Director on July 18, 1980, an election by secret ballot was conducted on August 28, 1980, which resulted in 32 ballots being cast for the Machinists, 11 ballots for the Steelworkers, 123 ballots for neither organization, and 24 challenged ballots which were not determinative. On September 3 and 4, respectively, the Steelworkers and the Machinists filed timely objections to the election. Subsequently both the Steelworkers and the Machinists withdrew certain of their objections. On October 31, 1980, the remaining objections raised matters identical to those alleged as unfair labor practices in Cases 32-CA-2915, 32-CA-3004, and 32-CA-3034 and ordered that Cases 32-RC-1085 and 32-RC-1095 be consolidated with said cases for purposes of hearing, ruling, and recommended decision. The basic issues herein are whether Respondent unlawfully discharged Sherrie Sanford, suspended John Ricketts, and assigned Russell Paquin to a more onerous job in which he was isolated from his fellow employees, granted certain employees wage increases, interrogated employees, made promises of benefits to employees, and threatened employees.

Upon the entire record, including my observation of the demeanor of the witnesses, and after due consideration of the briefs filed by the parties, I make the following:

### FINDINGS OF FACT

#### I. JURISDICTION

At all times material herein, Respondent, a Nevada corporation with an office and place of business in Sparks, Nevada, has been engaged in the manufacture and wholesale distribution of valves, regulators, and related hardware. During the 12-month period preceding the issuance of the complaints herein, Respondent, in the course and conduct of its business operations, sold and shipped goods and services valued in excess of $50,000 directly to customers located outside the State of California.

The complaint alleges, Respondent admits, and I find that Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

#### II. LABOR ORGANIZATION

The complaint alleges, Respondent admits, and I find that the Machinists and the Steelworkers each is now, and at all times material herein has been, a labor organization within the meaning of Section 2(5) of the Act.

#### III. THE ALLEGED UNFAIR LABOR PRACTICES

##### A. *The Alleged Violations of Section 8(a)(1) of the Act*

The Steelworkers conducted unsuccessful organizational campaigns at Respondent's Sparks, Nevada, facility in 1976, 1977, and 1979. In 1980 both the Steelworkers and the Machinists commenced organizational campaigns. On June 11 and 17, 1980,[1] the Machinists and the Steelworkers filed separate petitions, each seeking a unit of all production, maintenance, shipping, receiving, and inspection employees employed by Respondent at its Sparks, Nevada, facility. All of the matters herein arise out of the subsequent election campaign which culminated in an election on August 28, 1980. Of approximately 205 eligible voters, 11 cast ballots for the Steelworkers, 32 cast ballots for the Machinists, and 123 cast ballots for neither organization. Respondent also has facilities located in Oakland and Berkeley, California, whose employees are represented by a sister local of the Steelworkers. On June 1, following the expiration of a collective-bargaining agreement, the sister local commenced a strike which lasted 22 days. References to this strike were made by Respondent during the course of its election campaign.

##### 1. The employee opinion survey

In early July Respondent conducted an employee opinion survey.[2] The employees were informed of the survey by the following notice:

[1] All dates herein will be in 1980 unless otherwise indicated.

[2] Respondent has conducted other employee surveys. One was a questionnaire relating to child care needs which was done as a part of a

*Continued*

We are going to conduct an Employee Opinion Survey on 7/8, 7/9, 7/10 for all employees of GROVE here at SPARKS. The purpose of the survey is to find out how you feel about the company and your job. We have asked a private survey firm to conduct the survey for us. The survey form will be filled out by all employees and supervisors in small groups on company time, and it is voluntary.

No one will sign their name to this form. No one in the company will ever see the form you fill out. The survey firm destroys all questionnaires after the results are tabulated.

This survey does not imply that the company will be making any changes in employee wages, benefits, or working conditions, and employees should not construe the taking of this survey as any promise that anything will be done in the future.

Your supervisor will let you know the time when you can take part in the survey and where you should go to complete the forms.

Thank you for your help and for your frank opinions.

Each employee who participated in the survey was given a sheet which stated:

YOU WILL REMAIN ANONYMOUS—NO ONE FROM THE COMPANY WILL SEE THIS SURVEY FORM

YOUR PARTICIPATION IN THIS SURVEY IS ABSOLUTELY VOLUNTARY

THE COMPANY BY THIS SURVEY IS MAKING NO PROMISE OF CHANGES AND/OR INCREASES OF BENEFITS NOR IMPROVEMENTS AND/OR CHANGES OF WORKING CONDITIONS

THIS SURVEY IS NOT INTENDED TO COERCE, INTERFERE WITH OR RESTRAIN ANY EMPLOYEE IN THE EXERCISE OF THEIR RIGHTS TO JOIN OR NOT JOIN ANY GROUP, AND TO BE FREE OF UNDUE PRESSURE OR INTIMIDATION.

The first page of the employee opinion states, *inter alia*:

PURPOSE OF THIS SURVEY

The success of this company depends upon you and the way you do your work. If you and your fellow employees find good "job" satisfaction, your "job" experience will be more rewarding. This is the reason why your company wants to know what you think and how you feel about your "job." Your personal opinions and suggestions on how to make this a better and more pleasant place to work will be helpful to us in making our recommendations to your company.

* * * * *

The success of this company depends upon you and the way you do your work. If you and your fellow employees find good "job" satisfaction, your "job" experience will be rewarding. This is the reason why your company wants to know what you think and how you feel about your "job." THIS QUESTIONNAIRE DOES NOT IMPLY THAT THE COMPANY WILL BE MAKING OR PROMISING ANY CHANGES IN EMPLOYEE'S WAGES, BENEFITS, OR WORKING CONDITIONS. PARTICIPATION IN THIS SURVEY IS VOLUNTARY.

The four-page survey contains 60 questions to be answered yes or no; 14 of these questions refer to the immediate supervisor. The others seek to elicit whether the employee is satisfied or dissatisfied with various other aspects of his working environment and to ascertain whether the employee feels that he knows and understands the various employee benefits and company policies. The survey also asked the employee to list the things he does and does not like about working for Respondent, to list any employee benefit, personnel policy, or work rule he would like to know more about, and to state what he would like to see done to make Respondent a better place to work. The survey ends with the following notation:

This concludes the opinion survey. You may now return this form to the survey consultant. If you would like to talk privately concerning any special problem, suggestion or area of concern, please see the survey consultant before leaving the room.

Russell Paquin testified that he does not recall the name of the man who conducted the survey. However, he does recall that the man said he was from Virginia. The person conducting the survey further said, according to Paquin, that there was some problems in the Company and the survey was to get the impression of the shop employees and if there were direct problems with the supervisor, or somebody, that the conductors of the survey would inform Respondent's management of their recommendation and if they felt that an individual needed to be removed from the plant. The person further said that the survey was voluntary and confidential and that Respondent would not see the completed form. Employee William Myers stated that he was also told that the survey was voluntary and further that it had nothing to do with the union activity. Someone asked if they were from the Union or affiliated with the union busters and the person said no, they were not.

2. The announcement of the hiring of a new interim industrial relations manager

By memorandum dated July 23 and signed by Dodson, Respondent notified employees that Industrial Relations

survey conducted by the city and county governments. One was a request directed to machine operators for comments on the condition of the equipment they operated; and one, conducted in August 1978, also sought employees' opinions as to their supervisors and work environment.

Manager Dwight Dickey was no longer employed by Respondent and that personnel matters should be directed to Ed Taylor, who would be acting as interim personnel director until further notice.[3] By memorandum dated August 4, 1980, and signed by Dodson, the employees were notified that Ed Rhodemyre[4] had resigned effective August 1, 1980, and that he was being replaced by Neil MacLeah. Paquin testified that both Rhodemyre and Dickey were regarded unfavorably by employees. Obscenities were scrawled around the shop regarding Dickey and mockery was made of Dickey and Rhodemyre including cartoons by employees who were displeased by personnel actions, or lack of such, taken by them.

On July 31, Respondent distributed to employees a letter signed by Dodson regarding Taylor's qualifications and duties. The body of the letter states:

> For those of you who do not know Ed Taylor, he has been hired by me to fill Dwight Dickey's position in a consulting role. In this position, he will administer the personnel and employee relations activities of our plant.
>
> Taylor is a noted employee relations specialist with 16 years experience in managing the personnel functions of many large companies and guiding and counseling other companies as an employee relations consultant. His duties have included:
>
> 1. Establishing Apprentice and Journeyman Training and Certifications Programs.
> 2. Establishing Hourly Wage Review Programs.
> 3. Administering Wage Adjustment Policies.
> 4. Reviewing and/or establishing Merit and Performance Review Programs.
> 5. Establishing Grievance Procedures with Coworker representation at the 3rd step.
> 6. Establishing and Coordinating Management Training for Supervisors.
> 7. Conducting Attitude (opinion) Survey follow up and the implementations of changes in practices.
> 8. The Standardization of Policies.
> 9. The Elimination of unnecessary work rules.
> 10. Creating programs to assure the uniform interpretation and application of company policies across all departments and shifts.
>
> I hope to utilize Ed's talents in the future to continue to make Grove Valve and Regulator Company of Nevada the best place in the area to work. I encourage you all to get to know Ed personally. He is available as my representative to confidentially counsel and discuss with you any problems you might have interpreting the Company's policies and procedures in this area.

[3] Taylor is a management consultant with Human Resources & Profits Associates, Inc., a management consulting firm which had been previously retained by Respondent.

[4] Rhodemyre was a member of management whose exact position was not identified on the record.

3. The establishment of the positions of employee relations representative

On August 6, the following notice signed by Taylor was posted in the plant:

> NEW—2 POSITIONS—NEW
>
> 2 New Positions—Permanent
> EMPLOYEE RELATIONS REPRESENTATIVES—SALARY: Open
> One representative assigned to 1st shift.
> One representative assigned to 2nd shift.
> QUALIFICATIONS: Minimum 6 months service with Grove/Nevada plus high school diploma or equivalent.
> Responsible for co-ordinating manpower and training needs. Will screen applicants for apprentice—journey training programs.
> Position reports to Personnel Manager.
> Interested applicants should talk with Ed Taylor in Personnel in the next 7 days.

Dodson testified that persons were selected to fill these positions around the middle to the latter part of August and that the new employee representatives commenced their duties around September 2.

4. The advertising campaign for prospective employees, the tours of prospective employees through the plant, and conduct relating thereto

During the first part of August, Respondent began to advertise for new employees. Also, Respondent posted a sign outside its facility indicating that jobs were available. Paquin testified that his supervisor, Gordon Guthrie, assistant manager of quality control, told him that Respondent was going to start a third shift. Dodson testified that Respondent's management had been discussing the possibility of starting a third shift since 1978, that additional production was needed for shipments. Late in 1978 a decision was reached to put on a third shift because of the increase in business. At some point, Respondent's president gave his approval for Dodson to purchase in excess of $2 million in capital equipment so long as Dodson could man that equipment. Dodson further testified that, in order to man the new equipment, he needed approximately 60 to 75 additional employees. Dodson instructed Dickey to be very vigorous in his recruitment program and Respondent advertised for new employees all over the west coast and into the Rockies. The record does not establish the date of these instructions nor the specific dates of the advertising program. Dodson testified that approximately 1,200 people applied for jobs and that, of those, 300 were given tours of the plant. Both Paquin and employee Walter Paul Thornton testified that about 3 weeks before the election they saw a number of people being escorted around the plant. When they inquired of their respective supervisors as to who these people were, Guthrie told Paquin that they were applicants for jobs on a third shift and Tony King, Thornton's supervisor, merely affirmed that they were prospective employees. King also told Thornton that about 700 people had applied for the jobs.

On August 12, the following memo signed by Dodson was distributed to employees with regard to these job applicants:

> Here are some questions and their answers which I feel you want answered:
>
> QUESTION: Why are we interviewing all those people and is there going to be a third shift?
>
> ANSWER: First, Grove-Oakland is unionized and has a strike history, most recently 22-day long Steelworkers strike in June of this year. Grove-Nevada has never had a strike because we have never had a union. If either union wins on August 28th and if they call an economic strike, the applicants you see now will be hired to replace all of you who strike.
>
> Second, because of the uncertainties of the future, we have found it desirable to have a storehouse of screened, qualified job candidates so that we can be better able to respond to business cycle changes or other problems. We are considering the possibility of having a third shift. Our Oakland plant started one about 3 weeks ago.
>
> We have ordered an additional 90 days' supply of castings and parts and have contacted job shops who have stated that they can burn and machine our parts should business requirements dictate this need.
>
> QUESTION: If the union is voted in and work is not available in any given department—will we be sent home?
>
> ANSWER: There is no way to tell. In Oakland, because of the lack of flexibility in the contract, it has been a practice to send people home when they run low on work. I have pesonally sent twenty or thirty men at a time home in Oakland. There is no predicting that would happen if the union got in here.

Dodson admits that only 8 or 10 of these employees were actually hired and that no third shift has been instituted at the Sparks facility.

5. Other employer election campaign literature

On that same day, Respondent also distributed to employees a document headed "FACT SHEET" and signed by Dodson, the body of which reads:

> The IAM (Machinists) union won an election at Amot Controls—just down the street—on April 23, 1980. The union won that election by suggesting that the Sparks pay rate of $4.25 to $5.75 per hour would be negotiated upward to over $9.00 to match the Amot-IAM rates in the unionized headquarters shop in Richmond, California.
>
> The IAM win in Sparks was certified about May 10th. Today, three months later, no economic or working condition issues have been agreed to despite the fact that the two bargaining teams have met 6 times. The 7th bargaining session is scheduled for sometime in August.
>
> Simultaneously, back in Richmond at the main plant, the existing IAM contract expired and the workers struck 14 weeks ago. The Richmond plant continues to operate and produce by using permanent strike replacements and supervisory-management staff.
>
> Conclusions:
>
> (1) Nothing is automatic in negotiating a first contract.
>
> (2) First contracts frequently take a long time to reach.
>
> (3) Existing contracts that expire frequently lead to prolonged strikes.
>
> Don't let it happen here—VOTE NEITHER.

On August 15, Respondent distributed to the employees a leaflet which appears to be a reproduction of a document containing photographs of Respondent's Longview, Texas, facility with the printed text to the right of the photographs describing the facility. The following is typed to the left of the photograph:

> PLANT BUILT 1952
> TEXAS RIGHT TO WORK STATE
> NON-UNION PLANT
> 160 EMPLOYEES
> 1969 & 1970: PRODUCT LINES ADDED
> 1971: REPRESENTATION ELECTION
> TEAMSTERS CERTIFIED BY 5 VOTES
> 1972: PLANT CLOSED
> GEORGE DODSON SENT TO LONGVIEW TO CLOSE PLANT
> 2 EMPLOYEES TRANSFERRED
> 158 UNEMPLOYED

On August 18, a memorandum signed by Dodson was distributed to all salaried personnel. Paquin testified that another unit employee gave him a copy of the memorandum and that he may have also seen it on his supervisor's desk, which is located next to his. Thornton testified that he saw the memorandum prior to the election on a supervisor's desk. The memorandum reads:

> TO: ALL SALARIED PERSONNEL
> SUBJECT: GROVE/NEVADA STRIKE POSTURE
>
> Some of you among the salaried staff have expressed your concern or worry about personal safety should a strike occur at our facility. I am concerned also and want to assure you that we are fully prepared to conduct business as usual. A Comprehensive Strike Contingency plan has been developed by immediate staff. Deliveries and truck shipments of finished goods have been assured through non-union trucking lines. A plant security force from out of state has been retained to assure our personal entry and exit from the plant. As well, this security service will maintain a non-threatening atmosphere in this plant vacinity [sic]. Through these efforts and many others referred to on the Strike

Contingency Plan, we will operate here without harm to you or significant disruption to our production schedule.

Please recall that the Steelworkers struck the Oakland plant this past June with no incidents of harm to the staff there. As well, recall that during that twenty-two day strike, Grove shipped over 1.7 million of finished product.

Should we ever find ourselves on strike here, we will equal the Oakland-Berkeley record of personal safety and valve building.

On August 23, Respondent distributed to employees a letter signed by Dodson which reads:

STRIKE

Dear Fellow Employee:

I am writing to you at home so that you can consider this serious problem without anyone to disturb you. None of us wants a strike, but it is a fact of life that both of these unions are well known as being strike happy. We have never had a strike at Grove/Nevada. This does not mean there would be one, but where there are unions, there is always the possibility of a strike. I can assure you that we do not want a strike, but if a union tried to force us to sign a contract that would not be in our best interests, one could happen. In the past couple of years, the two unions have had over 1,300 strikes or one every other day.

We can learn something from the experience of other companies like Amot who have had their share of strikes. Strikes happen when a union can't deliver. Sometimes the breakdown occur over extravagant wage demands or the union's insistance on invading management's rights. Or sometimes it happens over the union demanding dues check-off and super-seniority for stewards. Whatever the reasons, tempers rise, threats of a strike are made and the next thing you know there are pickets on the road.

A STRIKE IS A POWER STRUGGLE BETWEEN THE UNION AND THE COMPANY—A WAR! *You* are right in the middle of it as the union's ammunition. *You* are the one who goes without a pay check. *You* are the one who walks the picket line. *You* are the one who can't collect unemployment. *You* and your family are the ones who cannot pay the bills. *You* are the one who might lose good friends. And, *you* are the one who risks being *permanently replaced* by a new hire.

A strike is not pleasant. *Nobody ever "wins" a STRIKE!* We would have to go to of lot of expense to get our product to our customers. Employers lose wages they may *never* get back. That's the risk you and I would have to take.

It doesn't have to be that way. I urge you to use your vote wisely—but first carefully consider this question:

"What will be the *best* decision for you and your family?"

Attached to the letter was a bulletin which explained the right of an employer to permanently replace economic strikers and contained a reprint of a summary of a Board decision taken from the Labor Relations Reference Manual, in which the Board found that the employer did not violate the Act when it refused to terminate permanent replacements for economic strikers. Also attached to the letter was a one-page excerpt from "A Guide to Basic Law and Procedures Under the National Labor Relations Act" which defines the right of an employer to permanently replace economic strikers.

6. Speeches by employer representatives

During August, Watson, Dodson, and MacLean delivered speeches to unit employees. The parties stipulated that Dodson and Watson read their speeches from prepared texts and that whenever MacLean made a presentation, other than brief introductory remarks, he followed a prepared text. It was further stipulated that in his presentation MacLean ripped sheets of paper which contained listings of employee benefits from an easel and dropped them to the floor to dramatize the possible loss of benefits.

MacLean's speech was delivered on several occasions between mid-August and shortly before the election. The General Counsel contends that portions of MacLean's speech constituted a threat of loss of benefits if employees voted for union representation, in that in his opening remarks he enumerated particular benefits then in existence and stated, "All these things you see there are things you have right now. When we go to the negotiating table, the union has to put those back up on the board. . . . We can't take it away from you because you vote for a union. But in order for you to keep it, it has to be bargained and put into a contract with our agreement." MacLean then explained that objections to the election can be filed which "normally takes a few months of investigation, the hearing process, court procedure and whatever else they do to get the matter cleaned up. If these things are finally cleaned up and often this can be many months, as a matter of fact, our attorney is working on a case right now where the election took place in April and they still don't have the thing untangled. It may be another 5 or 6 months or more. Remember when a union wins an election they've only won the right to ask. Nothing goes into our contract unless we agree to it. One thing I can guarantee you is that we would not agree to anything that we did not feel was in the best interest of Grove. That may sound like a hard line to take but this is what happens when a union puts itself between a company and some of its employees."

MacLean further stated, "Some people have asked how long it takes to negotiate the first contract. It can't be predicted. No one knows. Try to imagine creating a document, that must cover every possible situation having to do with hours, wages and conditions. Every word, every phrase, every clause must be consistent and written and rewritten. So we've all seen how the word *if* or the word *the* or the placement of a comma can change the whole meaning of a sentence. What really

happens is the company will take however long it takes our negotiating committee including our lawyers and whatever other specialists we decide to have in, to draw up what we believe would be a workable contract." He then proceeded to explain the negotiation process and concluded, "So I think you can see that it can take a long time. Now again, in the meantime, everything you now have would stay the same until a contract was signed, or an impasse was reached. . . . Try to imagine the example I have given you—how this time phase can work. It could possibly stretch out into 6, 7, 8, 10, months, I don't know." He then stated, "Negotiations are a two-way street. Again we would not want to bargain away what you already have and deserve but, if they insisted on dues checkoff, superseniority, or unreasonable work practices, maybe the union pension plan or unreasonable wage increases, the union may trade away things that you have to get any of these things. We have a responsibility also to our company and we can guarantee you that we would not agree to any contract that would not be in Grove's interests." McLean further stated, "Your wage rates and every single benefit and privilege are subject to negotiations. The U.S. government and the NLRB and the unions do not and cannot guarantee you'll even wind up with what you now have. If the union wins the election and tries to get things that the company can't afford in dollars and restrictive practices, we would have to consider trading off things that you currently enjoy. Even then we could be forced to close down, sell out to strangers or whatever. I don't think it's worth the risk."

Dodson's speech was delivered sometime between August 22 and 25. The General Counsel contends that the following portion of the speech is unlawful: "Some of you have said all this talk about strikes and economic striker replacements is just so much talk. I have heard that the unions are telling you that any strike that takes place would not be an economic strike. They have done you a terrible disservice if you believe that. Of the thousands of strikes that take place, almost all—my guess is more than 90 percent—are economic. Don't buy that ripoff. Only a fool would believe their lies. It is you and your family who could be caught up in that kind of mess. Let me assure you, I have been directed by my boss to run this plant regardless of what happens. And I'll do it."

Watson spoke to the employees on or about August 25. Early in the speech he stated, "The other day Neil [MacLean] spoke with all of you about negotiations if the union wins. I have to second what he said. We will not agree to anything, I repeat anything, that is not in the best interests of Grove/Nevada. Let me put it right up front to you guys. I'm not about to allow this plant to make the mistakes other unionized plants have made by agreeing to a contract that would make it difficult or maybe impossible to continue to operate here. That happened to us in Texas and Oakland is getting difficult to manage competitively." Later in the speech Watson stated, "Wanting a union if you were paid minimum wage is one thing, but that is not the case here. I must emphasize this point because I think the risk of a strike and the risk of losing your jobs, or the plant moving are especially real in our case because our wages and benefits are so good already."

### 7. Conversations between supervisors and employees

The General Counsel also contends that certain conversations between Respondent's supervisors and employees were violative of the Act. Paquin testified that in late June or early July in the shop he and Guthrie, an admitted supervisor, were standing together when two employees, X-ray men, walked across the shop. According to Paquin, Guthrie said that if the Union got in Respondent would have to get rid of one of those X-ray men, that they would not need both of them. However, in his prehearing affidavit, Paquin stated, "I just don't see where a union is going to do any good in a right-to-work state. We don't have enough work for two X-ray men, and if we had a union, we would have to get rid of one of them."

Guthrie denies telling Paquin that if the Union came in an X-ray technician would lose his job. However, he admits that he did have a conversation with Paquin in which a possible loss of work for X-ray technicians was discussed. According to Guthrie, he does not recall exactly what was said but at the time they were very slow in the X-ray area and he explained to Paquin that he had to rotate some people and try to get one of the X-ray people out in the shop for training purposes so he would not lose his job because of lack of work.

Employee William Miano testified that within the month prior to the election he and three other employees were discussing the pros and cons of a union when Ralph Barnes, quality control manager and an admitted supervisor, walked up to them. The employees were discussing going out on strike if the Union came in, and one of them asked if it were true that they could lose all their benefits. Miano replied, "No, you can't. The book, referring to a Board publication, says that you can negotiate everything. You don't lose it and you don't start from scratch. Barnes said you would lose your benefits because you'd have to start all over after the vote, negotiating from zero. Miano said he didn't think so, that Barnes should read the Board publication." Barnes mentioned that his son was employed by the telephone company which was then on strike, and said his son could possibly lose his house and everything. One of the employees responded that he wished he had a house and a car that he could lose. On cross-examination, Miano testified that after he said "you don't have to start from scratch," Barnes replied, "No, you do. Everything's up for grabs. Everything's up for negotiation." And then Barnes said, "My son's right now preparing for a strike at the phone company, and he could lose his house and he could lose his car."

Barnes testified that the employees were discussing the pros and cons of the election and one of them said, "Mr. Barnes, is it true that if we were to have a union representing us that we would not lose everything?" Barnes replied, "That may be true. You may not lose something and you may gain something. It all depends on what was being negotiated. Otherwise, no, it's not always true that

you don't lose something or you always gain something." One of the employees said, "Well, could we lose everything?" Barnes said, "I don't know. I cannot say it is so, that you don't always have everything that you have now, it depends on the negotiations. You may gain something, you may lose something." Barnes further testified that one of the employees said that if there was a union and there were negotiations that did not go the right way and there happened to be a strike, would they have to go on strike if they belonged to the Union. Barnes replied that there was a strike anticipated with the telephone company in California and Nevada, that his son worked there and was worried that, even though the employees in Nevada did not vote a strike, he would have to go on strike whether he liked it or not because of the decision of the employees in California who constitute a majority. Barnes also said that his son was worried that if he was on a strike and could not pay his bills he might lose his house and his car. Barnes denied stating that the employees would lose their benefits if they selected a union or that if they selected a union they would start from zero. According to him, he said everything was negotiable.

Employee Richard Sell testified that sometime prior to the election he was interviewed by Taylor for the position of employee representative. Thereafter he saw Taylor outside the cafeteria and asked him if he had selected anyone for the job. Taylor said no. They began talking and Taylor invited Sell into his office. According to Sell, a number of things were discussed, different places that Taylor had worked, different jobs that he had before, and Taylor recounted several stories. At some point, Taylor said, "Do you want to buy this plant?" Sell did not answer, he just looked at Taylor. Then Taylor said, "I'll sell it to you for $10 million. I'll loan you $9,999,000. Then where is the union? With new ownership, the union is out." Taylor did not testify.

8. Employee evaluations and wage increases

The complaint also alleges that certain employees were granted wage increases to induce them to abandon their support and activities on behalf of one of the unions. In support thereof, Paquin testified that he had a performance evaluation in May and that as a result of that evaluation he received no pay increase at that time. His last performance evaluation and pay increase prior thereto was in November 1979. On August 18, Guthrie showed Paquin an intercompany form which indicated that he had received a retroactive pay increase for the period covered by the May 18 performance review.[5] On August 22, Paquin was given a performance evaluation with a wage increase based on that evaluation. Both the retroactive wage increase based on the May 18 evaluation and the prospective wage increase based on the August 22 evaluation were reflected in the paycheck received by Paquin on election day. According to Paquin, no one ever explained to him why he was receiving the retroactive wage increase.

[5] The May 18 performance review covered the 90-day period prior thereto.

Thornton testified that up to June 1980 he had received performance evaluations every 6 months; thereafter due to a change in policy he was to receive them every 90 days. Normally he received his performance review 2 to 3 weeks after the scheduled date for the review and then any pay increase was made retroactive to the scheduled review date. According to Thornton, his review date was scheduled for September 2 or 3; however, his supervisor, Horst Zunker, gave him a performance evaluation on August 27. As a result of the review, Thornton received a 3-percent wage increase which was reflected on his following paycheck which was after the election. Zunker did not explain why Thornton was being shown his performance review in advance of the scheduled date.

9. Employee appreciation day and raffle

On August 25 and 26, Respondent distributed to employees a leaflet which announced an "Employee Appreciation Day" to be held on August 27, the day before the election. The announcement read:

CHOW DOWN
*FREE*
EMPLOYEE APPRECIATION DAY
BAR-B-Q
FREE DOOR PRIZES
*TWO* HOBIE CATS WITH TRAILER
*THREE* COLOR TV'S
*THREE* CHAIN SAWS
*THREE* MICRO-WAVE OVENS
*THREE* TRAIL BIKES-HUSQUARNA

A 7 DAY TRIP TO HAWAII FOR TWO
WITH SPENDING MONEY

LIVE BAND
COW ROAST
DRINKS
*WEDNESDAY* 8-27-80 12:32 p.m. till ??
*LINDA WAY PARK*

The event, which commenced during the first shift and continued into the second shift, was held as scheduled and the prizes announced in the leaflet were awarded to employees. Thornton, who had been in Respondent's employ for 4 years, testified that this was the first employee appreciation day held during the course of his employment. He further testified that he attended the event, that attendance was voluntary, and that the event was open to all employees, both salaried and hourly paid. However, he also testified, without contradiction, that the only people given raffle tickets were hourly employees. He further testified that, at the time of a previous union election, Respondent raffled off live turkeys and color televisions and that at this previous raffle employees who were not eligible to vote in the election were eligible to win prizes and some, in fact, did. Thornton also testified that he had never before seen Respondent offer prizes of the magnitude and value that were offered at the employee appreciation day. According to

Thornton, raffle tickets did not have to be purchased, they could be picked up in the office by giving your name and your card number. During the course of the appreciation day event, the prize winners were announced over the loudspeaker and a written list of prize winners was later posted. Thornton believes the list was posted the following day, which was the day of the election, and no evidence to the contrary was adduced. No speeches were made regarding the Union during the course of the event.

### B. *The Reassignment of Russell Paquin*

Paquin has been employed by Respondent for approximately 6 years. He worked as a machine operator for the first year of his employment. Then he worked as an inspector for about 4 years. At the time of the hearing herein, he was working as a machine operator and had been for about 2 months. Paquin was active in the Steelworkers organizational campaign which culminated in a representation election in 1979. The Steelworkers organizational activities were renewed in 1980 and beginning with the first of the year Paquin was active in soliciting signatures on authorization cards, leafleting, and other activities on behalf of the Steelworkers, which continued until the election. He turned in approximately 133 authorization cards to the Union, about 80 or 90 of which had been personally solicited by him. He also attended the meeting on July 17, 1980, at which the election agreement was signed.

In June and July, as a floor inspector in the machine shop, Paquin's job was to go from machine to machine as he was paged by the machine operator to perform inspections and to also perform roving inspections on his own initiative. He worked on the day shift and came into contact with 20 or more employees in the performance of his duties. In July and August, Guthrie was Paquin's supervisor. Prior to that, his supervisor was Tom Plato. In late July, according to Paquin, Guthrie reassigned him from his duties as an inspector to a job in the inspection office maintaining the scrap report and filing papers.[6] Prior to that, another employee, Bob Candevan, had been performing these functions. When Paquin was reassigned to the inspection office, Candevan was reassigned to the shop as a floor inspector. According to Paquin, when Candevan was performing these functions, he did not work exclusively in that office; he also did some floor inspection. Paquin, however, performed office duties exclusively following his reassignment. He contends that maintaining the scrap report required only a couple of days out of a 5-day workweek, and that he filed papers the remainder of the time. According to Paquin, he did not have enough work to fill an 8-hour day. Paquin continued in this particular assignment through September 1980. Paquin further testified that he was never told why he was being reassigned from an inspector to the inspection office; rather, about a week before the election, Guthrie merely told him that he would be going in the office to replace Candevan who was coming out onto the floor.[7]

Guthrie testified that Paquin was assigned to work in the quality control office around the first of July to a job that had previously been performed by Candevan. He admits that Candevan did not spend all of his time performing office work, that he also worked in the lab helping the lab technician who calibrates instruments and he occasionally did inspection work when it was required and needed. Prior to Candevan's assignment to the office, that job had been performed by a Mrs. Rockenfelder, who was reassigned to the shop area for training. According to Guthrie, he has been quality control supervisor since May 1980. About a month after assuming this position, he initiated a program of rotating all inspectors every 3 months to different areas for training purposes. Since he was understaffed, this broadening of employee work experiences would give him greater flexibility in covering all positions when employees were absent. Guthrie claims he explained the reason for rotation to Paquin. When he informed Paquin of his reassignment, he told him he was going to make some changes because he believed that rotation was the best way to learn the job and that because of his qualifications—being good at paperwork—Guthrie was going to put him in the office and hopefully he would eliminate the paperwork backlog. He did tell Paquin that the office work was to be his exclusive assignment until it was caught up. Paquin remained in that job for a period of 3 months. In approximately 2 months, he had the paperwork up to date. Thereafter, the paperwork required 3 to 4 hours a day. Guthrie contends that he was not aware until about Paquin's final 2 weeks in the office that Paquin had time on his hands in which he was not performing any duties. According to Guthrie, he would ask Paquin how he was doing and Paquin would say fine. Paquin was rotated out of the inspection office around October 1 and was succeeded in the office by Jerry Miller, a line inspector on the floor.

Guthrie admits that he knew that Paquin was interested on behalf of the Steelworkers. However, he denies that Paquin's union activities had anything to do with choosing him to do the paperwork at that particular time. According to Guthrie, Paquin was selected to be rotated into the office at that time because they were behind in paperwork and he was the best qualified person to get them caught up. Further, Paquin was having trouble as a line inspector. He had been written up previously for poor performance and Guthrie wanted to try him in a position in which he could excel to see how he would do. Paquin's job in the office was to make heat certification entries on cards and to file them and to file shop routings.[8] According to Guthrie, Paquin had

[6] The scrap report is a log of scrap showing the part number, the cost, and the reason it was rejected. Paquin did not purport to identify all the papers he filed.

[7] I note that such a conversation at this time could only mean that Paquin was reassigned to the office during the week prior to the election. Yet he earlier testified that he was reassigned in late July. I credit Guthrie as to the timing of the reassignment.

[8] The record does not clarify whether Guthrie was actually contradicting Paquin as to his duties in the office or whether they were describing the same duties in a different manner.

performed this job full time for approximately a year sometime in 1977 or 1978.[9] In Guthrie's opinion, Paquin was good at that type of work. Guthrie denied rotating Paquin into the office in order to keep him away from other employees. He further denied that Paquin was restricted to the office.

Guthrie testified that Candevan was not assigned to work in the office full time. He worked 4 hours in the office and 4 hours in the lab. Paquin was the first person to be rotated into the office full time. Miller followed Paquin and worked in the office full time. When Miller did not have enough work to do in the office, he asked for other things to do. The heat certification filing required 5 to 6 hours a day. Miller was instructed to ask for other task and he did. He would help Mrs. Rockenfelder do scrap reports. Following Miller, another inspector, Sherman, was rotated into that job. The heat certifications were still a 5- to 6-hour-a-day job when Sherman was doing it and Sherman helped Mrs. Rockenfelder with the scrap reports. Neither he nor Miller did any inspection work unless someone was absent. Guthrie is still continuing to rotate inspectors into this office job for a 3-month period. The only time an inspector assigned to the office did any inspection work was when someone was absent. Paquin never asked for extra work when he was assigned to the office.

### C. *The Suspension of John Ricketts*

The complaint alleges that Ricketts was suspended for 5 days because of his union or other protected concerted activity. He was active in the Machinists organizational campaign and he attended the meeting in July at which the election agreement was signed. Ricketts admits that on Friday, August 15, he neglected to check certain of the dimensions for parts from his machine with the result that 22 parts were produced with oversized bores. This necessitated scrapping the parts at a loss to Respondent of approximately $5,800. Ricketts reported the incident to his supervisor, Horst Zucker, at or about 11:30 p.m., and continued to work, as scheduled, on an overtime status until approximately 2 a.m. Ricketts was on vacation during the workweek beginning Monday, August 18. He returned to work on Monday, August 25, at which time he was sent to Taylor's office where he was advised by Taylor that he was suspended for 5 days because of the mistake he had made on the night of August 15. Ricketts returned to Taylor's office later that afternoon and asked if the parts were completely scrapped. Taylor said he did not know and made a telephone call to the shop superintendent for the night shift. After a few moments, Barclay came into the office. Then Barclay and Taylor went out and talked to Ralph Barnes, the quality control manager. When Taylor returned to his office, he told Ricketts that the 5-day suspension was still in effect, that the scraped parts were valued at $5,800.

Ricketts testified on direct examination that he had never received any prior verbal warnings, written warnings, or suspensions. However, during the cross-examination of Ricketts, Respondent introduced exhibits which showed that on June 27 Ricketts received a verbal warning and on August 6 a written warning for events which occurred on June 26 and August 5. The August 6 written warning stated that Ricketts could be subject to suspension for any further violation of company rules. The August 6 warning recites the fact of the June 27 oral warning but does not specifically specify the conduct involved. The August 6 warning recites that on August 5 Ricketts stopped work early and warned that the next time Ricketts stopped work early or violated company rules he would be disciplinarily suspended and that repeated further violations would result in his termination. On October 1, Ricketts was again suspended for 3 days for scrapping three parts, due to inattention, on September 25 and was warned that any future violation of any company policy or rule whatsoever would make him subject to immediate termination.

### D. *The Termination of Sherrie Sanford*

Sanford was employed by Respondent at its Sparks, Nevada, facility from July 13, 1979, until September 4, 1980. At the time she commenced her employment, her job title was industrial relations assistant. Subsequently her job title was changed, at her request, to personnel technician. This change in title was not accompanied by any change in duties. She worked under the direct supervision of the industrial relations manager, who was Dwight Dickey until July 23. Sanford worked at a desk located immediately outside Dickey's office. The only other employee located in the immediate vicinity was Jana Jarvis, executive secretary to George Dodson, the plant manager. Jarvis' desk is located immediately outside Dodson's office.

Sanford's duties were to conduct the initial interviews of applicants for jobs in the plant, maintain personnel files of hourly employees, process employees' periodic review forms and other forms relating to raises and vacations,[10] and conduct orientation sessions for new employees covering benefits, management hierarchy, etc. Upon interviewing an applicant, if there was an opening, the application was submitted to the appropriate supervisor. The processing of employee reviews was clerical. The actual evaluation of an employee's performance was done by the employee's supervisor. Approximately 70 percent of her time was spent performing the above duties. The remainder of her time was spent performing general secretarial functions for Dickey. Sanford and Jarvis attended seminars regarding wage and salary administration, and equal opportunity matters, including legality of certain types of questioning during interviews. The seminars were attended at Respondent's expense and they were the only employees sent to such seminars.

Dickey's duties included wage and salary administration (including making wage surveys), recruitment of employees, developing and updating personnel policies

[9] At that time, Guthrie was a leadman in quality control. Paquin denies that he performed office work full time but testified that as an assembly inspector he was in the office half of the time.

[10] This involved submitting the appropriate forms to supervisors and securing their return properly filled out, transmitting the information to the proper department for insertion into the computer, and filing the forms in the employee personnel files.

and procedures, final approval of hiring of employees, supervision of the personnel technician, the plant nurse, and the receptionists, responsibility for plant security, counseling and recommending discipline of employees, and representing Respondent in unemployment and Equal Employment Opportunity Commission hearing.

On July 23, Dodson held a meeting of all salaried employees[11] during which he announced that Dickey had been terminated. Immediately thereafter, Dodson spoke to Sanford individually, assuring her that her job was not in jeopardy. On that same day, Edwin Taylor, who had been working for Respondent in a consulting capacity, began acting as interim industrial relations manager. Sanford testified, without contradiction,[12] that on July 23 she asked Taylor if she were going to retain her position. Taylor said that decision would be made by whoever permanently replaced Dickey. Later that day, Sanford inquired of Taylor as to what the procedure would be in dealing with applicants. Taylor said he wished to speak with each applicant and that he wanted Sanford to research all of an applicant's former jobs. He said he wanted her to find out if they had formerly worked in union shop and, if they had, he would not hire them. Sanford said this had not been past procedure and, either then or later, said she did not think it was legal. Nevertheless on July 23 and 24, Sanford did make inquiries of former employers of applicants, as directed by Taylor.

On July 24, Sanford spoke to Taylor regarding these telephone calls. Alex Horncole[13] and Ann, a temporary secretary, were present. Sanford said she did not think these calls were legal. Taylor said they were not illegal. Sanford said they were using the calls to discriminate and that it was not fair not to hire someone simply because he belonged to a union shop since, in many cases, you are required to join the union. Taylor said he did not want to hire any union sympathizers. Sanford said it was not fair. Horncole asked if Sanford liked her job, if she liked the money she was making. Sanford said yes. Horncole asked if she wanted the Sparks plant closed like the one in Longview, Texas. Sanford said, "It's not fair, we should treat the people like individuals." Horncole said bleeding heart liberals always got to him. Either Taylor or Horncole said he did not appreciate her attitude, that she was not being cooperative.

At or about 5 p.m. on Thursday, July 24, Sanford spoke to Dodson in his office. According to Sanford, she told Dodson that she could not make these phone calls, that she considered them illegal. Dodson replied, "Well, we have to do things we don't like to do." Sanford said, "Couldn't someone else make them? I'm good at doing my personnel function, let me do that, but I don't want to be involved with the other." She further said she did not think it was right.

Dodson testified that Sanford came into his office and asked to speak to him confidentially. She said she could not work under the conditions that were going on. Dodson asked her to be more specific. Sanford said, "I'm an honest person, you are an honest person. I've been asked to do things that are not honest. I've been asked to do things that I don't think are ethical. I think they are illegal and I think they are dishonest. Knowing you, Mr. Dodson, you would not want me to do that and I can't work under those conditions." Dodson asked Sanford to please be brief and tell him what illegal dishonest thing she was asked to do. She said that Taylor had asked her when she interviewed people to screen out anyone that looked like they had any connection with the Union, that had belonged to the Union or a union affiliate of any kind. Sanford said she could not work under those conditions, she must have something else, she would have to leave, she just could not work like that. Dodson told Sanford to return to work and to give him a chance to look into the situation. He said that as long as applicants were qualified he wanted them hired.

Dodson further testified that he then went to Taylor and told him that Sanford had said that Taylor had told her to screen out prospective applicants that had a union background or any affiliation or connection with the Union in any way. Taylor said he had told her to screen them out. Dodson said, "You cannot do that. I don't want that to happen. I want employees. I'm doing everything I can to try to find employees and you're screening them out because of an affiliation with the union. I don't want that. Don't do it anymore." Taylor replied, "If that's the way you want it." Dodson said, "That's the way I want it." Sanford admitted on cross-examination that Dodson did tell her that he would check with Taylor concerning Taylor's instructions to Sanford.

Sanford worked on Friday and came in to work as usual on Monday, July 28. Shortly after she reported to work that day, she gave Dodson a letter of resignation. According to Sanford, Dodson read the letter, said he was sorry to lose a good employee, that he understood her position and if there was anything he could do to help her get another job he would be glad to do so. The body of the letter of resignation, dated July 28, and addressed to Dodson, reads:

> In view of the change in policy now in effect in the Personnel Department at Grove/Nevada I hereby offer my resignation effective August 3, 1980. Per Company Policy an employee with less than one consecutive year's employment is requested to give one weeks notice in order to receive accrued vacation pay. I have accrued 80 hours vacation for the time I have worked at Grove.
>
> Mr. Dodson, I have the utmost respect for you as an employer and as a man. I have enjoyed my association with you and with Grove as a Company. Per our conversation of last Thursday, July 24, you are aware of my feelings towards Grove's new procedures, and I believe you will understand my need to leave.
>
> If you feel that one week's notice is not sufficient and desire me to remain an additional week to get my Personnel responsibilities (reviews, vacations, etc.) in order, then I will stay the extra time. It is

[11] Apparently plant employees are paid on an hourly basis and office employees are paid on a salaried basis.

[12] Taylor did not testify.

[13] Both Taylor and Horncole were admitted to be agents of Respondent who occupied the position of consultant with Human Resources & Profits Associates, Inc.

not my intention to leave you or the Company in a bad predicament.

I would also ask you, Mr. Dodson, to write a letter of reference for me. A letter from you would help me secure a position of responsibility with another company.

Thank you for your support during my time at Grove. I hope you are always happy and smiling which is how I choose to remember you. Good luck with the election. Grove's problems do *not* include the need of a Union.

Dodson testified that Sanford came into his office and said, "The conditions are intolerable for me to work with Ed Taylor." Dodson said, "Sherrie, we have cleared up this other problem. That won't happen again." Sanford said, "I don't know what it is but I can't work with the man. I just cannot work with Ed Taylor." Dodson said, "I don't know what other alternative I have. I don't have any openings in salaried right now." Sanford handed him her letter of resignation and said, "I'm handing in my resignation. I will work until you can get someone. I'll work one week or I'll work two weeks but I can't continue employment here. I just cannot work with Ed Taylor."

Later that day or the next day, according to Sanford, Dan Wilson, Respondent's corporate industrial relations manager whose office was at the Oakland facility, approached her and inquired if there would be any circumstances under which she would not terminate her employment with Respondent. Sanford said she did not like the current procedures. Wilson asked if she would consider a position at the Oakland facility for a month during the remainder of the election campaign at the Sparks plant. Sanford said she would consider it and inquired as to what her duties would be there. Wilson said it had not been determined. Sanford asked if she would be working in personnel when she returned to Sparks. Wilson said he did not know, that he could not promise that. Sanford said she enjoyed personnel work, that she was good at it. Wilson said he did not know and mentioned the possibility of the development of a quality control circle at the Sparks plant and that she could possibly be considered for that. This conversation started in the office and then continued at a restaurant.

Sanford further testified that, on the following day, she had another conversation with Wilson. At that time he told her that her job in Oakland would be doing special projects for John Lilla, benefits administrator, and John De Pierre, safety administrator, and that, when she returned to Sparks, she would have another position, possibly not in personnel. They finalized the arrangements for her transportation to Oakland and her expenses while she was there. Wilson asked if she would consider working in a department other than personnel. Sanford said she would "depending on what the job was." During one of the conversations Wilson said that Jack Watson, Respondent's president, had over heard Sanford working with applicants and thought she was a good employee and had directed Wilson to make the offer of the job at the Oakland facility.

Wilson testified that, during the last week in July, Dodson told him that Sanford had submitted a letter of resignation. Wilson asked what reason she gave for resigning. Dodson said for one thing she just did not like working for Ed Taylor. Wilson said there was a backlog of papers to be processed at the Oakland facility in connection with a number of recent hires and inquired if it would be alright to speak to Sanford regarding going to Oakland for a period of time to assist with the backlog. Dodson said it would be alright.

Either that same day or the next day, according to Wilson, he asked Sanford if she had submitted her letter of resignation. She replied that she had. Wilson asked why. Sanford said it was because she did not think she could work with Taylor. Wilson said he wanted to talk to her regarding going to Oakland to work on a special assignment. Sanford said she would be interested. Later that day, they went to a restaurant where they continued their conversation. Wilson testified that basically he talked about the job she would be doing in Oakland and about a quality control program that they anticipated instituting at the Sparks facility. Sanford asked what she would be doing when he returned from Oakland. Wilson said he did not know, but that the special assignment would be for about a month and a lot of things could happen during that time.

Wilson also testified that, when they were discussing the quality control program, he explained the basic structure of the program, that a facilitator would be in charge and that he could see the job of the facilitator eventually becoming a full-time position. He concedes that he may have said that she might be considered for that position. He denies telling her that when she returned from Oakland she could definitely have a job at the Sparks facility. According to him, he had no authority to make such an agreement. He denies offering Sanford the special assignment in Oakland because of any union activity or in order to get her out of Sparks during the election campaign because she refused to screen out persons who had union backgrounds. According to him, he made the offer because work was available in Oakland and it was easier to use an experienced person to do this work.

Sanford testified that she had no specific conversation with Dodson relative to returning to the Sparks facility at the conclusion of her Oakland assignment. However, according to her, during the week of July 28, she told Dodson that she realized that he had something to do with her remaining with Respondent, and thanked him. Dodson smiled and said okay.

Sanford did work at the Oakland facility during the month of August. According to her, during that month she spoke to Wilson on the telephone several times and once in person regarding what her job would be when she returned to Sparks. Each time she spoke to him on the telephone, she inquired as to what she would be doing when he returned to the Sparks facility. Each time he said he did not know. On one occasion, he also said that she should read some materials on his desk regarding quality control circles. On another occasion, around August 20, Wilson said he was discussing it at that moment and that he would get back to her. On the last

day that she worked in Oakland, she spoke to Wilson in person and asked what she would be doing when she returned to Sparks. He said he did not know, that Sanford should just report to Dodson.

Wilson denied having any face-to-face conversations with Sanford while she was in Oakland but admits that he had four or five telephone conversations with her during the last 2 weeks in August. She inquired as to what she would be doing when she returned to Sparks, and he told her there were no positions available to discuss with her, that they would have to wait and see. He also told her that he would talk to Dodson and get back to her. According to Wilson, he did speak to Dodson. He told Dodson that the backlog in Oakland had almost been eliminated, that they were getting close to the end of Sanford's scheduled assignment there. He asked if Dodson had anything in the Sparks facility that they could offer Sanford. Dodson said no, that the best thing they could do would be to put her on special assignment when she returned or have her do whatever work was available. After speaking with Dodson, according to Wilson, he telephoned Sanford and told her she would be asking for Dodson on special assignments. Wilson denies that Dodson ever told him that he would not hire Sanford because she refused to screen out applicants with union backgrounds.

Dodson testified that, about 2 days after Sanford gave him her letter of resignation, Wilson came to him and said, "You know Sherrie is a smart girl, the company needs to hold on to people. Do you mind if I can find some employment for her in the Oakland plant?" Dodson replied, "By all means do so, I don't want her to leave, she wants to leave." Wilson said he would talk to Sanford. Shortly thereafter Wilson told Dodson he was sure he had some special project work and if Dodson were agreeable he would take Sanford to Oakland and she could work down there.

Dodson further testified that even though Wilson was not at the Sparks facility every day he was there almost every day during the last 3 week preceding the election. However, Wilson never mentioned anything to Dodson regarding a job for Sanford in Reno until a couple of days before Sanford returned to Sparks. According to Dodson, on a Thursday in his office Wilson told him, "Sherrie has been calling me. I can't procrastinate any longer. I've got to give her an answer. She wants to know what she is going to do because her job is running out in Oakland, this special project, and she wants to know can she come back to the Reno plant and what will she be doing. I don't know what to tell her."[14] Dodson said, "You waited a long time to come and tell me about it too." Wilson replied, "I've got to make a decision. I've got to tell her something." Dodson said, "I don't have anything, you've got me cold here. I am very busy. I don't know of anything that I have in the applications that I have open in the salaried positions." Wilson said, "Well, okay." Nothing further was said about the matter.

Dodson denied that he ever had any agreement with Sanford whereby she would go to Oakland for the duration of the union campaign and then return to a job at the Sparks facility or that Wilson ever told him that Wilson had made such an agreement with Sanford. According to Dodson, the only thing that Wilson said to him was that he had told Sanford that if Dodson had anything available in the Sparks facility when she returned she could go back to work there, if Dodson had some special projects for her to do. Dodson disagreed to this. Wilson never told Dodson that he had made an absolute commitment to Sanford that she would definitely have a job at the Sparks facility when she returned. Dodson admits that he did not process Sanford's letter of resignation once she went to Oakland. When questioned as to why he did not process it, Dodson testified, "I'm not sure. There's many things going on and I just didn't. I didn't process it because I intended to talk to her at some other date, so I just put it in her folder."

Sanford returned to the Sparks facility on Monday, September 2, and immediately talked to Dodson. Sanford testified on direct examination that Dodson said he regretted that he had to accept her letter of resignation. Sanford said she did not understand. Dodson said he simply did not have any work for her, that since she had been in Oakland for the past month and had not been in contact with the union negotiations and the union bargaining that she could not be of any assistance and that he simply did not have any work for her. Dodson said he would give her filing work but that it would be busy work and he did not want to lower her to that. Sanford asked if there was nothing else at all in the entire plant, and asked if he would talk to the managers in the plant and get back to her. Dodson said he would and Sanford said she would contact him later that week. On cross-examination, Sanford testified somewhat differently as to this conversation. This version was that she walked into his office and said good morning. Dodson said, "Sherrie, I'm going to have to accept your letter of resignation." Sanford said, "What?" Dodson said, "All I have is some filing for the inspection office and you don't want to do that. It would be busy work." Sanford said, "There's nothing else in the plant that you have for me?" Dodson said no. Sanford said, "Well, will you check with the other managers in the department and asked them if they have a position for me." Dodson said he would and Sanford said she would return later that week for his decision.

Sanford further testified that she returned and spoke to Dodson on September 4. According to her, when she entered the office she saw her check lying on his desk and asked if that was for her. Dodson said it was. Sanford said, "You didn't find anything else in the whole plant for me to do?" Dodson said no. Sanford said this was not a voluntary termination, that she was not resigning. Dodson said he had her letter. Sanford referred to the date of the letter and said it was past that date, that she did not resign. She then asked Dodson why they had sent her to Oakland to bring her back to terminate her. She said she did not understand. Dodson said that was a temporary position. Sanford said she was told that she would have a job when she returned. Dodson asked by whom, and Sanford replied by Dan Wilson. Dodson said,

[14] The Sparks plant is also referred to as the Reno plant.

"Dan Wilson does not run this plant, I do." Sanford said, "But he's an agent of the Company and he's the one who made me the offer." Dodson said, "That's no matter, you've resigned." Sanford asked if he had made out the termination form, which he had. She then told him she did not think it was fair and asked if he would have her personnel file copied. She inquired about unemployment, saying that if he told the unemployment office that she quit voluntarily she would not be able to receive her unemployment compensation. Dodson said he would have to contact his lawyer to find out what to do.

According to Dodson, Sanford came into his office at or about 7:05 a.m. on September 2 and said, "I came back for my job." Dodson said, "What job?" Sanford said, "Well, I was led to believe that I had a job here." Dodson replied, "Well, Sherrie, I don't have any openings in the personnel department." Sanford said, "I couldn't work under those circumstances with Mr. Taylor in there anyway. Maybe you have something else." Dodson said, "No, I don't have anything else. You're coming in cold on me. I didn't know you were coming in. Let me think a minute and see what I can do." Dodson then said that the only thing he could think of was the quality control department where they had some part-time people to do a lot of filing and that a lot of times it took several days to catch up with the filing becasue of customer requirements. Sanford replied, "Well, I'm not a file clerk." Dodson said, "Sherrie, I don't know of anything that I have now, but give me a chance and I will try to see if I can find something. I was unaware that you were coming in this mornlng. I was surprised when I saw you. I've not had time to look over anything to see what may be available here in the plant, but I can think of the quality control, that I know we are bringing people in there. As a matter of fact, I hired some young girls to come in from high school to do the filing on a part-time basis. Anyone I could get to do the filing, I did because people don't like to file, I guess." Sanford said, "No, I'm not a file clerk." Dodson said, "Well, you go back and we'll see what I can find out."

Dodson also testified that Sanford then said she felt that she was promised a job, that she did not have any money, she was broke and did not have a dime. Dodson said, "Well, you've got some money coming. I'll give you some money." Sanford said, "I've got a house payment due. I'd like to have some money because I don't have any money, I don't have a dime." Sanford then asked if she could get an expense check for her Oakland to Sparks trip. Dodson asked if she had receipts. She said she did not. Dodson said that would be no problem. He gave her the money from his billfold and she signed for it. He promised to have her regular check processed just as quickly as possible. At some point during the conversation Dodson told Sanford that if she did not accept what he had to offer, then he would have to accept her resignation. She said that was not fair, that she was not being treated fairly. Dodson asked what she meant. Sanford said, "Well, by going down there to Oakland and working that negated the resignation, it's not valid anymore because I went to Oakland." Dodson said, "That's a matter of opinion." He then explained that Respondent was a business which had to make money for its stockholders and that he could not just make jobs for people, that if she could not take what he had to offer, then he accepted her resignation.

Dodson further testified that on that afternoon he checked all open job requisitions and found no job available for Sanford in the salaried positions. He then checked with three or four managers to see if there was anything that Sanford could do. He specifically recalls making a point of checking with the material control manager because they had been discussing some changes in that department and he thought there might be a job that Sanford could do there. However, all of the managers that he spoke to said they were fully staffed. Sanford came in to see him at 10 o'clock on Thursday morning and asked if he had found anything for her. Dodson said he had not found a position for her and he was going to make out her termination. He then made out her termination slip describing what he considered the situation to be, and asked Sanford to sign it. Sanford said she would sign it but asked if she could write a satement on it. Dodson said she could put any statement that she wished on it. According to Dodson, he then said, "Sherrie, you know the policy, that you are not deserving of severance pay." Sanford said, "Yes, I understand that." Dodson said he was not too happy with the way things had gone in her particular case so he was going to give her severance pay.

Dodson testified that by this comment he was referring to the fact that Sanford seemed to be sincerely under the impression that she was supposed to get her job back at the same rate of pay when she returned to Sparks. However, her old job had been filled and Taylor was still employed as personnel director at that time. He further testified that the filing job to which he referred on September 2 was in the quality control department. His intention in offering her this filing job was to give him time to work out something more satisfactory. However, he never explained this to Sanford. Dodson admits that he did not check as to whether there were vacancies other than in the salaried clerical area nor did he ever ask Sanford if she would be willing to work in a position that was outside the salaried clerical area.

### E. *Conclusions as to the Alleged Violations of Section 8(a)(1) of the Act*

#### 1. The employee opinion survey

The complaint alleges that, by the administration of the employee opinion survey, Respondent solicited employee grievances in an effort to undermine employee support for, or activities in behalf of, the Union. The controlling case law is set forth in *Uarco Incorporated*, 216 NLRB 1, 1-2 (1974), where the Board stated:

> . . . the solicitation of grievances at preelection meetings carries with it an inference that an employer is implicitly promising to correct those inequities it discovers as a result of its inquiries. Thus, the Board has found unlawful interference with employee rights by an employer's solicitation of grievances during an organizational campaign although

the employer merely stated it would look into or review the problem but did not commit itself to specific corrective action; the Board reasoned that employees would tend to anticipate improved conditions of employment which might make union representation unnecessary. However, it is not the solicitation of grievances itself that is coercive and violative of Section 8(a)(1), but the promise to correct grievances or a concurrent interrogation or polling about union sympathies that is unlawful; the solicitation of grievances merely raises an inference that the employer is making such a promise, which inference is rebuttable by the employer.

Respondent argues that any inference of a promise to correct grievances was rebutted here, as in *Uarco*, by Respondent's express, affirmative emphasis on its inability to make promises and by its prior practice of surveying the opinions of its employees on matters of wages, working conditions, and improvement in operations, particularly the August 1978 survey.

I find that the questions in the employee opinion survey were clearly firm so as to solicit employee grievances. I further find that Respondent has adequately rebutted the inference of a promise to correct those grievances which arise from the mere fact of the solicitation. Thus, in three different places, the questionnaire states that it does not imply that Respondent will be making or promising any changes in wages, benefits, or working conditions. Further, a survey utilizing the same techniques was employed by Respondent in 1978. The record does not establish that this 1978 survey was conducted in the context of a union organizational campaign. Therefore, the timing of the survey herein during the union organizational campaign does not of itself establish an unlawful motivation. *Mt. Ida Footwear Company*, 217 NLRB 1011 (1975). However, the General Counsel argues that Respondent made an express promise to redress grievances when Paquin was told by one of the persons administering the survey that, if an analysis of the results of the survey so indicated, a recommendation could be made to remove a supervisor. Further, the General Counsel argues, this promise was kept when Dickey and Rhodemyre were removed from Respondent's employ. I conclude that this latter contention is speculative and unsupported by the record. The record does not establish that the survey revealed wide employee dissatisfaction with Dickey and Rhodemyre nor does it establish why they left Respondent's employ. In all the circumstances, particularly the prior, similar questionnaire and the failure of the General Counsel to establish a connection between the surveys and the department of Dickey and Rhodemyre, I find that the record does not establish that Respondent solicited employee grievances in an effort to undermine employee support for, and activities in behalf of, the Unions. Accordingly, I find that Respondent did not violate Section 8(a)(1) of the Act by conducting the employee opinion survey.

2. The announcements of Taylor's appointment to replace Dickey and the establishment of the new positions of employee relations representative

The complaint alleges that, by its annoucement of Taylor's appointment to replace Dickey, Respondent promised employees improvement in their benefit packages, wages, hours, and working conditions if they would cease supporting any union. Specifically, the General Counsel argues that a reasonable reading of the announcement which enumerates Taylor's job functions warrants a conclusion that Taylor was bringing an expertise to the job which would have a positive impact on Respondent's personnel policies, resulting in benefits to the employees. This, coupled with the fact that the employees were invited to deal directly with Taylor concerning their problems even through an organizing campaign was in progress, the General Counsel contends, warrants a rejection of Dodson's assertion that the announcement was merely a perfunctory job description of Taylor's duties and of the duties which had been previously performed by Dickey. I find no merit in this contention. The duties listed in the announcement are fairly common to the position of industrial relations manager and, as set forth above, the record does not establish a relationship between the employees' expressed grievances and the replacement of Dickey by Taylor. Further, in a July 23 memo to all employees Dodson specifically stated, "Personnel matters should be directed in accordance with existing company policy to Mr. Ed Taylor. . . . All previously issued instruction, orders, procedures, etc., remain in full force and effect." There is no evidence that the employees did not deal directly with Dickey as to their problem. Absent evidence to the contrary, it must be assured that they did, at least to some extent, since he was industrial relations manager. Contrary to the General Counsel, in the circumstances herein, I perceive no coercion or promise of benefit in Respondent's enumeration of Taylor's qualifications, nor do I interpret the announcement as necessarily suggesting that Taylor's qualifications are superior to those of Dickey.

The complaint also alleges that Respondent announced the establishment of the position of employee relations representative as a benefit in order to induce employees to abandon their support for any union. The General Counsel offers no evidence other than the announcement itself in support of this allegation. Respondent argues that the General Counsel has failed to show how the creation of said position constituted a benefit or an improvement in employee working conditions; that the evidence fails to establish that the lack of said positions was a source of employee complaints and the cause of their seeking unionization, and further that Respondent did not utilize the creation of these positions as a tool in its campaign against either Union. I agree with Respondent and, in the absence of sufficient evidence to establish that employees could reasonably perceive the establishment of these positions as a benefit or as a response to their expressed grievances or their reasons for seeking unionization, I find that the General Counsel has failed to establish that Respondent announced the establishment of

the position of employee relations representative in order to induce employees to abandon their support for either of the Unions. Accordingly, I find that Respondent did not violate Section 8(a)(1) of the Act either by the announcement that Taylor had replaced Dickey and Taylor's qualifications for the position, or by the announcement of the establishment of the positions of employee relations representative.

### 3. The advertising campaign for new employees; the tours of prospective employees through the plant; and the announcement to the employees of the reasons for the interviewing of numerous job applicants

The complaint alleges that from about August 9 to about August 28 Respondent, by the use of certain advertisements and notices in the public media, told its employees that strikes and the permanent replacement of employees were inevitable if employees chose to be represented by a union. The complaint further alleges that during the week of August 18 Respondent demonstrated to employees that a strike was inevitable and that they would be permanently replaced if they chose a union to represent them, by conducting numerous potential striker replacements through its plant during times when his employees would see them all in order to induce its employees not to choose a union to represent them; and that on or about August 12 Respondent, by George Dodson, impliedly threatened employees with the permanent replacement of striking employees and stated that a strike was inevitable if they chose to be represented by a union. Respondent argues that no evidence was adduced to support the allegation as to the advertisements and notices in the public media and that this allegation of the complaint should be dismissed. Although there is evidence in the record that Respondent did advertise for prospective employees and that a notice as to the availability of jobs was posted outside the plant during August, Respondent is correct that no evidence was adduced as to specifically what information the advertisements and notices contained nor as to whether, or in what regard, these advertisements, or the response thereto, differed from that of Respondent's normal recruiting campaigns.[15] However, the manner in which Respondent handled the job applicants involved herein indicates that Respondent's motivation for its August solicitation of job applications was indeed different from that of earlier recruitment efforts.

Sanford testified that Respondent normally had 15 job openings a month for hourly employees. Thus, despite Respondent's argument that interviewing 1,200 applicants was neither outrageous nor beyond legitimate business motivation, I conclude that conducting 300 job applicants through the plant was not a response based on Respondent's normal manpower needs. This conclusion is buttressed by the lack of any evidence that Respondent previously had conducted such massive tours of applicants through the plant and further by Dodson's August 12 memo. That memo specifically states, "If either union wins on August 28 and if they call an economic strike, the applicants you see now will be hired to replace all of you who strike."

Respondent argues that these tours did not imply an inevitability of strikes and that, by Dodson's memo, Respondent was merely lawfully advising employees of its right to hire permanent replacements, *United Aircraft Corporation, Hamilton Standard Division (Baron Filament Plant)*, 199 NLRB 658 (1972). I find this argument unpersuasive. Here, Respondent went beyond a mere explanation of its right to replace economic strikers and specifically stated that the job applicants being escorted through the plant would be the replacement for economic strikers. Thus, the memo must be considered in the context of these tours, and both the memo and the tours must be considered in the context of Respondent's election campaign which admittedly had the possibility of a strike as one of its principal things, and of Respondent's contemporaneous conduct, some of which I have found below to be unfair labor practices.

The Board has considered such conduct in *Southland Cork Company*, 146 NLRB 906, 908–909 (1964), where it stated:

> . . . there was nothing unlawful *per se* about Respondent's conduct in seeking to protect its plant operations by having a ready supply of help available in the event of a strike. But it seems to us that Respondent far exceeded the reasonable necessities of its situation by the manner in which it advertised to existing employees the recruitment of potential employees. There was no need for the ostentatious flaunting of the large number of applicants for jobs by having them fill out job applications in the plant under the eyes of employees and then parading them through the plant in groups under the guidance of high supervisory officials. The work was unskilled; no experience was necessary to operate the machines in use. Previously, Respondent had received applications for jobs in the office and not in the plant. Although department heads had sometimes shown job applicants through their departments, mass scale touring had never been used before. Under all the circumstances, including particularly the other unfair labor practices found, we believe and find, contrary to the Trial Examiner, that the described hiring procedure had an object beyond that of simple job recruitment; that a principal purpose was to intimidate employees, which it did, to create fear in their minds that if they struck they would be immediately and permanently replaced.[4]

[15] Dodson testified that Respondent maintains an ongoing effort to recruit new employees for the Sparks facility which includes advertisement and personal recruiting trips by management personnel throughout the western States.

[4] The fact that Respondent's attorney and its president told [union attorney and negotiator] Murphy that none of the employees would be discharged in order to hire new applicants does not weaken this conclusion. Respondent never told this to employees although aware of employee disquiet; Murphy also said he did not believe Respondent's witnesses; and, finally, this testimony does not meet General Counsel's contention that by touring applicants

through the plant, Respondent was impliedly threatening employees with loss of jobs *if they had the temerity to strike.*

I conclude that the Board's rationale in *Southland Cork* is applicable in the circumstances herein. Therefore, I conclude that by its August advertising campaign, the conducting of job applicants through the plant, and the explanation for these tours given to employees that the applicants would be their replacements in the event of an economic strike, Respondent intended to, and did, coerce employees by creating fear in their minds that, if they selected either of the Unions as their collective-bargaining representative, an economic strike was inevitable and if they struck they would be immediately and permanently replaced.[16] Accordingly, I find that Respondent thereby violated Section 8(a)(1) of the Act.

### 4. Alleged threats of plant closure and inevitability of strikes contained in Respondent's election campaign literature

Throughout its election campaign, Respondent continued to emphasize the possibility of a strike. Thus, on the same day that it distributed the memo as to the job applicants, it also distributed the memo summarizing the state of negotiations in the strike by the Machinists at Amot Controls which concluded (1) nothing is automatic in negotiating a first contract; (2) first contracts frequently take a long time to reach; and (3) existing contracts that expire lead to prolonged strikes.

On August 15, 3 days later, Respondent distributed a leaflet which referred to its Longview, Texas, plant. In a rather cryptic manner, the text thereon conveyed that the plant operated nonunion from 1952 to 1971 with some expansion. Then in 1971 a union was certified as the representative of the employees and in 1972 the plant closed, resulting in 2 out of 160 employees being transferred and 158 being left unemployed. The message was clear—when the union came in, the plant closed.

On August 18, 3 days later, Respondent distributed a memo to salaried personnel (which includes nonsupervisory clerical personnel) which begins by stating that some of the salaried staff had expressed concern or worry about personal safety should a strike occur at the Sparks facility. It then states that Respondent has developed a comprehensive strike contingency plan and outlines some of the measures included in this plan. However, the memo is not confined to security measures about which employees had allegedly expressed concern. It also refers to plans to assure deliveries and shipments and to avoid any significant disruption to Respondent's production schedule.

Respondent argues that these memos fall within the bounds of permissible campaign propaganda. Further, Respondent argues that there is no evidence that it distributed the August 18 memo in a manner calculated to come to the attention of employees. This latter contention is incorrect. Respondent's salaried personnel includes nonsupervisory office staff. True, it does not include employees in the unit involved herein; however, it is a reasonable assumption, and a result I conclude was intended by Respondent, that employees would share the sort of information contained in this memo which was so vital to their economic well-being. This is particularly true since the memo does not indicate that it is confidential and there is no evidence that Respondent in any way indicated that it considered it as such, and some unit employees, in fact, obtained copies of it.

I have carefully considered the text of these memos and the cases cited by the General Counsel and Respondent and I conclude that they exceed the permissible bounds of election propaganda. In the context of the massive interviewing of job applicants, the tours of the plant given to a large number of these applicants, Dodson's August 12 memo referring to the applicants and the overall emphasis of Respondent's campaign on strikes, and the certainty of permanent replacement of strikers, I find that these memos were intended to, and did, create the impression that representation by either of the Unions would threaten continued employment and job security, that negotiations would be hard and prolonged and would culminate inevitably in an economic strike resulting in the immediate and permanent replacement of all strikers.

I further find that although the August 23 memo and the various speeches were couched in permissible terms, including some disclaimer language to the effect that Respondent wished to avoid a strike, and were not in themselves violative of the Act, they did not negate the impact of this impression and, in fact, tended to reinforce it. Accordingly, in all of the circumstances, I find that Respondent violated Section 8(a)(1) of the Act by threatening its employees with loss of jobs, plant closure, and the inevitability of a strike and their permanent replacement if they selected the Union as their collective-bargaining representative. *Garry Manufacturing Company*, 242 NLRB 539 (1979).

### 5. The alleged threats to individual employees as to plant closure, loss of jobs, and loss of benefits

The General Counsel contends that certain statements made to employees constituted unlawful threats of plant closure and loss of jobs. I credit Sell and Sanford as to their undenied accounts as to statements made to them by Taylor and Horncole. Respondent argues that Taylor's statement to Sell could not have been taken seriously enough to warrant any inference of a threat. While I agree that the threat to sell the Sparks facility to Sell could not have been taken as a serious offer to sell, I conclude that one could hardly miss the implication that, if the employees did select one of the Unions as their collective-bargaining representative, Respondent could sell the plant to a bona fide purchaser and the Union would be out. I find this statement to be violative of Section 8(a)(1) of the Act.

I also find Horncole's statement to Sanford to be coercive. Thus, in the context of a conversation where Sanford was protesting Taylor's instructions to her to dis-

[16] The fact that the possibility of instituting a third shift was also mentioned does not detract from this conclusion. Since only 8 or 10 of these employees were actually hired and no third shift had been instituted at the Sparks facility by the time of the hearing herein, I find it a reasonable inference that Respondent's consideration of the institution of a third shift had not reached a point where it could reasonably have influenced the timing of this massive interviewing of job applicants.

criminate against job applicants because of their membership in, or support of, a union, Horncole's questions as to whether Sanford liked her job and salary and whether she wanted to risk closure of the Sparks plant constituted a threat that Sanford might lose her job because she did not want to assist in the antiunion campaign planned by Taylor and that, if either of the Unions won the election, the Sparks plant might close. I further find that Sanford's subsequent conversation with Dodson negated the threat to discharge her for any failure to so cooperate as well as countermanding Taylor's instructions to Sanford. Accordingly, I find these were not violative of the Act. However, since I have found below that Sanford was entitled to the protection of the Act, I find that Horncole's threat of plant closure was violative of Section 8(a)(1) of the Act.

The General Counsel also contends that Guthrie's statement to Paquin regarding the X-ray employees was violative of the Act. I do not credit Paquin that Guthrie told him, if Respondent's employees were represented by a union, he would have to discharge one of the X-ray employees. In this regard I note that Paquin testified that he had numerous conversations with Guthrie regarding the Union Paquin supported and/or election campaign literature. Yet Guthrie is not alleged to have made any other unlawful threats nor even to have put forward Respondent's lawful point of view. I also note Paquin's differing versions as to how the subject of the Union was brought into the conversation. Thus, on direct examination, he made no attempt to place the alleged statements into context. On cross-examination, he testified that Guthrie approached him and asked, "How's it going," and he replied, "If you're talking about the union, just fine." Paquin does not explain why he inserted the Union into the conversation in response to what is a comnon, casual type greeting. In his prehearing affidavit, Paquin states that he responded to Guthrie's initial statement by saying, "We're doing real good," and then when Guthrie asked who he meant by "we," he responded, "the union."

I further note Paquin's denial that he was ever given a reason for being assigned to the office. I find it unlikely that a new supervisor would institute a plan of rotating assignments and then neglect to mention the rotation system to one of the first employees to be rotated. I find this particularly unlikely when the employee was known to be a very active union adherent and Respondent was conducting a hard-hitting, seemingly well-orchestrated election campaign. In these circumstances I find it incredible that Guthrie would not have mentioned the rotation system to Paquin. I credit Guthrie's denial that he told Paquin that if the Union got in, one of the X-ray employees would be discharged. Accordingly, I find that Guthrie did not threaten. as alleged in the consolidated complaint, that an employee would have to be discharged if Respondent's employees were represented by a union.

The complaint also alleges that Ralph Barnes threatened employees with loss of benefits if they chose to be represented by a union. In support thereof, employee Miano testified that, during a conversation when he and three other employees were discussing the pros and cons of unionization, he said it was not true that the employees could lose all of their benefits if the Union came in, that negotiations did not start from scratch. At this point, according to Miano's testimony on direct examination, Supervisor Barnes interrupted and said, "You would lose your benefits because you'd have to start all over after the vote" negotiating from zero and that Barnes also mentioned that his son was employed by the telephone company which was *then* on strike and his son could possibly lose his house and everything. However, on cross-examination Miano testified that after he said "you don't have to start from scratch," Barnes replied, "No, you do. Everything's up for grabs. Everything's up for negotiations." Barnes then said that his son was *preparing* for a strike at the phone company and could lose his house and his car.

I do not credit Miano's testimony on direct examination as to this conversation. In this regard I note that Miano's version of Barnes' statement as to negotiations was somewhat different on cross-examination. Also on direct examination, Miano's version was that Barnes said his son was then on strike and on cross-examination stated that his son was preparing for a strike. Barnes admits that he participated in the conversation but his version of what he said constituted a permissible explanation of the risk inherent in negotiations, that you may gain something and you may lose something. He further testified that his statement about his son was in response to a question regarding strikes from one of the employees and that he stated that a strike was anticipated with the telephone company and that his son was worried that if he was on strike and could not pay his bills he might lose his house and his car. He further testified that he said his son was worried that even though the employees at his particular facility did not vote for a strike they would be forced to strike because of the decision of employees at other facilities who constituted a majority. This appeared to be in direct response to the question as to whether, if there happened to be a strike, employees would have to go on strike if they belonged to the Union.

In concluding not to rely on Miano's version of the conversation, I have considered the fine line between what is permissible and what is not permissible when an employer explains the vicissitudes inherent in the negotiation process and that often a change of a few words, which might seem innocuous to an employee, can make the difference between a lawful and an unlawful explanation. Therefore, I am unwilling to rely upon the paraphrasing of one employee, particularly when the General Counsel failed to adduce corroborating testimony from any of the other three employee participants in the conversation and when Miano exhibited a tendency to overstatement, at the very least, by testifying that Watson said he would not negotiate with the Union. Such a statement is not contained in the text of Watson's prepared speech which the parties stipulate was the speech read by Watson. In these circumstances, I find that the General Counsel has not established that Barnes threatened employees with the loss of benefits if they chose to be represented by a union. Accordingly, I find that Re-

spondent did not violate Section 8(a)(1) of the Act by Barnes' statements alleged in the complaint.

6. The alleged accelerated evaluations and wage increases

The General Counsel argues that Respondent granted accelerated evaluations and wage increases to Paquin and Thornton immediately prior to the election in order to persuade them to abandon their support of the Union. Although I agree that the timing of these evaluations and wage increases would be at least suspicious if, in fact, they did constitute a variance from Respondent's customary procedure, I find that by the testimony of 2 employees out of a unit of approximately 205 employees as to their experiences with evaluations and wage increases, the General Counsel has not established such a variance. This is particularly true where, as here, Respondent's practice in such regard is susceptible of proof through personnel records relating to evaluations and wage increases.[17] I therefore find that the General Counsel has failed to establish that the timing of these evaluations and wage increases was calculated to encourage Thornton and Paquin to abandon their support of the Union.

7. Employee Appreciation Day

The Board has had occasion to consider employer-sponsored raffles during the course of an election campaign in the context of timely filed objections to Board-conducted elections. In this context, the Board has held that the conduct of a raffle does not oonstitute a *per se* basis for setting aside the election. Rather, the Board will consider all of the attendant circumstances in determining whether the raffle destroyed the laboratory conditions necessary for assuring employees full freedom of choice in selecting a bargaining representative. Some of the factors considered relevant by the Board have been whether the circumstances surrounding the raffle provided the employer with means of determining how and whether employees voted, whether participation was conditioned upon how the employee voted in the election or upon the result of the election, and whether the prizes were so substantial as to either divert the attention of the employees away from the election and its purpose or as to inherently induce those eligible to vote in the election to support the employer's position. Respondent contends that the prizes were not so substantial as to destroy the laboratory conditions of the election, citing the fact that the raffle was not held on the day of the election, that Respondent had a past practice of giving away prizes to its employees, inflation, and the fact that no mention of the election was made in speeches during the course of Employee Appreciation Day.

I find this argument unpersuasive. Even though the raffle was not held on the day of the election, it was held the day prior to the election[18] and, in view of Respondent's failure to adduce any contrary evidence, I credit Thornton that the prizewinners were posted on the day of the election. Further, the evidence as to Respondent's past practice of sponsoring a raffle establishes that the raffle was conducted in the context of a prior election campaign, the prizes then were only turkeys and color television sets, and all employees were eligible to participate in the raffle. Here, the raffle was limited to hourly employees (unit employees) who could only receive a raffle ticket by going to the office and giving their timecard number. One of the prizes was a 7-day trip to Hawaii for two with spending money. I find that such a substantial prize inherently induces those eligible to vote in the election to support the Employer's position.

In the circumstances herein, particularly the posting of winners on election day and the fact that the raffle was held on the day prior to the election, I conclude that the fact that the raffle on Employee Appreciation Day was not held on the day of the election does not overcome the tendency of these prizes to induce eligible voters to support the Employer's position. I therefore find that in these circumstances the raffle interfered with the employees' free choice of a collective-bargaining representative. *Drilco, a Division of Smith International, Inc.*, 242 NLRB 20 (1979). I further find that the raffle was such an integral part of Employee Appreciation Day that its coercive effect permitted the entire event. Accordingly, I find that by conducting its Employee Appreciation Day and raffle Respondent has violated Section 8(a)(1) of the Act.

F. *Conclusions as to the Suspension of John Ricketts*

The complaint alleges that Ricketts received a 5-day suspension because of his activities on behalf of the Machinists. However, evidence was adduced at the hearing which established not only that Ricketts had negligently made a production error resulting in scrapping materials valued in excess of $5,000, but also that he had received both verbal and written warnings prior to the suspension and that the written warning had placed him on notice that he would be suspended for any future breach of company rules. In view of this evidence, counsel for the General Counsel asserts was previously unknown to him, counsel for the General Counsel which moves in his brief that the allegation in the consolidated complaint as to Ricketts' suspension be dismissed. He also asserts that the Charging Parties were informed of his intention to so move; however, no opposition has been submitted as to this motion. Accordingly, the motion to dismiss subparagraph 7(b) of the consolidated complaint, pertaining to Ricketts' suspension, is hereby granted.

G. *Conclusions as to the Reassignment of Russell Paquin*

The General Counsel correctly asserts that the controlling issue here is whether Paquin was simply one in a series of inspectors who were given a rotating assignment in the quality control office, or whether the circumstances surrounding Paquin's particular assignment warrants a conclusion that the assignment was for the purpose of isolating him from his fellow employees be-

[17] The performance evaluation forms relating to the evaluations and wage increase in issue here are not in the record. However, a previous evaluation form for Thornton indicates the effective date (which, from the testimony, appears to be the due date) and the dates that it was filled out and approved.

[18] The election hours were 12 noon to 2 p.m., and 4 p.m. to 5 p.m., on August 28.

cause of his well-known union activities and sympathies.[19] The General Counsel argues that Paquin's tour of duty in the quality control office was materially different from that on those who preceded and followed him; however, the credited evidence does not support this argument.

As set forth above, I credit Guthrie that Paquin was reassigned to the office around the first of July and that he informed Paquin that he was being reassigned as part of the rotation program. Although Paquin claims that he was not told the reason for his reassignment, he admits that he does not recall his conversation with Guthrie in this regard other than that Guthrie told him he was replacing Candevan. I credit Guthrie that he told Paquin that the office work was to be his exclusive assignment until he was caught up which took approximately 2 months, that he would ask Paquin how he was doing and Paquin would say fine, giving no indication that he required additional work, and further that it was not until about Paquin's final 2 weeks in the office, which was after the election, that Guthrie became aware that Paquin had times during which he was not performing any duties.[20] Paquin admits that at some point he was told that if he did not have anything to do he should ask Barbara Phelps and Eunice Rockenfelder in inspection assembly if they had paperwork he could do. He further admits that he seldom did this even though, according to him, he average about 2 days of free time during a week. Guthrie testified that, once the backlog was eliminated, the assigned office work required only 5 to 6 hours a day and that all the other inspectors rotated to the office full-time were instructed to ask for additional work if necessary to complete an 8-hour day, and they did so.

In all the circumstances, I conclude that Paquin probably had not finished the filing backlog prior to the election and that, in any event, it was not until after the election that Guthrie became aware that Paquin had free time. I further conclude that there is no evidence to establish that the rotation program was instituted for discriminatory reasons and that the evidence is insufficient to establish either that the timing of Paquin's selection for rotation was discriminatory or that he was discriminatorily confined to the office in order to isolate him from fellow employees, thereby inhibiting his union activity. Accordingly, I find that the General Counsel has not met his burden of establishing that Paquin was reassigned to the office in violation of Section 8(a)(3) and (1) of the Act as alleged in the complaint.

### H. *Conclusions as to the Discharge of Sherrie Sanford*

It is undisputed that Sanford voluntarily resigned on July 28 to be effective as of August 3. I credit Dodson as to his conversations with Sanford of July 24 and 28. In this regard I note that, on direct examination, Sanford testified that, when she complained to Dodson regarding Taylor's instructions, Dodson replied, "Well, we have to do things we don't like to do." Yet on cross-examination after being confronted with notes she had made as to these conversations, Sanford admitted that Dodson told her he would check with Taylor. I find this to be more consistent with Dodson's version of the conversation than with Sanford's version. Further, Dodson was a most impressive witness whose demeanor on the witness stand and manner of answering questions consistently conveyed an effort to testify truthfully, even when his testimony was adverse to Respondent's position, such as concerning his conversation with Taylor regarding Taylor's instructions to Sanford and concerning Sanford's duties and authority.

Further, it is not alleged that unlawful conduct was involved in Sanford's temporary assignment to the Oakland facillty. The complaint alleges that she was unlawfully discharged on September 2 and the General Counsel's brief propounds the issue as being "whether Respondent merely failed to place her in other employment at the Sparks facility upon her return from Oakland because there simply was nothing available for which she would qualify or whether Respondent refused to place her in other employment because of her opposition and antagonism to Taylor's unlawful method of combating an organizing campaign."

Respondent argues that Sanford acted in a confidential capacity to Dickey and Dodson, individuals who formulate and determine Respondent's labor relations policy, and that therefore she was a confidential employee who is not entitled to the protection of the Act. In support of this argument, the Employer relies on *Hendricks County Rural Electric Membership Corporation* v. *N.L.R.B.*, 603 F.2d 25, 28 (7th Cir. 1979), cert. granted 101 S.Ct. 1479 (1981), and *N.L.R.B.* v. *Wheeling Electric Company*, 444 F.2d 783 (4th Cir. 1971). However, in the absence of a Supreme Court decision resolving the issue of the status of confidential employees under the Act, I am bound by the Board's law. *Iowa Beef Packers, Inc.*, 144 NLRB 615 (1963). The Board has long excluded confidential employees from bargaining units and has consistently applied a "labor nexus" standard in determining confidential status. Under this standard, the Board considers as confidential only those employees who "assist and act in a confidential capacity to persons who formulate, determine and effectuate management policies in the field of labor relations." *Ford Motor Company*, 66 NLRB 1317 (1946). *The B. F. Goodrich Company*, 115 NLRB 722, 724 (1956); *Kleinberg, Kaplan, Wolff, Cohen & Burrows, P.C.*, 253 NLRB 450 (1980).

The mere handling or typing of, or access to, confidential business or labor relations information is insufficient to confer confidential status. The Board also looks to the confidentiality of the relationship between the employee and persons who exercise the requisite managerial functions in the field of labor relations. *Ernst & Ernst National Warehouse*, 228 NLRB 590 (1977); *Los Angeles New Hospital*, 244 NLRB 960 (1979), enfd. 640 F.2d 1017 (9th Cir. 1981). Here there is no contention that Sanford

[19] Although the complaint alleges that Paquin was assigned to a more onerous job in which he was isolated from his fellow employees, it is clear, and Paquin admits, that the office assignment was not onerous.

[20] In discrediting Paquin's testimony that he was caught up with the filing backlog in a couple of weeks, I note his tendency, as in the case of when Guthrie told him of his reassignment, to slant his testimony in a manner most favorable to the General Counsel's position. I also note that Paquin admits that he never told Guthrie that he needed additional work. On the other hand, I found Guthrie to be an honest, reliable witness whose testimony I credit.

worked in a confidential capacity at the time of, or immediately prior to, her discharge. Also, her enumerated job duties at the time of the incident which is the basis both for the alleged violation of Section 8(a)(1) of the Act and for the alleged unlawful motivation for her discharge were in the area of personnel rather than labor relations. At the time, she had just begun working with Taylor and the record does not establish the requisite confidentiality in their relationship.

Respondent relies heavily upon her alleged relationship with Dickey. Yet, whatever their working relationship may have been, there is no evidence that she worked closely with Dickey concerning labor relations matters. Actually, apart from any inference one might draw from his title, the evidence is quite sparse as to his involvement in labor relations matters. Certainly, the evidence as to both her duties and those of Dickey is insufficient from which to infer that her function as clerk for the industrial relations manager would necessarily involve her in a confidential relationship as to labor relations matters with whomever happened to occupy that position. In this regard, I note that Sanford was not involved in the preparation, or typing, of any of the paperwork relating to the union organizing campaign or preelection matters.

Accordingly, in all the circumstances, I find that she was not a confidential employee at any time material herein. Further, even if she were, a confidential employee is entitled to the protection of the Act. *Hendricks County Rural Electric Membership Corporation*, 236 NLRB 1616 (1978); *Los Angeles New Hospital, supra.*

Respondent's argument is more persuasive as to the lack of unlawful motivation for Sanford's discharge. Sanford admits that her thinking was openly expressed, and well known, that Respondent's employees at the Sparks facility did not need union representation and she so stated in her letter of resignation. She balked at ascertaining whether applicants had worked in a union shop because she considered Taylor's expressed intent not to hire any applicants who had been so employed as being unlawful and also unfair since many employees are required to join a union in order to retain their jobs. This position was expressed to both Taylor and Dodson prior to her submitting her resignation. If Respondent's hostility to this position was so great as to motivate a refusal to find a job for her at the Sparks facility in September, after it had overwhelmingly won the election, I find it unlikely that Respondent would not seize on her resignation in July, during the heighth of its election campaign, as the perfect way to rid itself of her. Yet Respondent temporarily assigned her to a job in the Oakland plant.

I credit Wilson that he did not definitely promise Sanford a job at the Sparks facility at the conclusion of her Oakland assignment. She admits that he told her he could not promise that she would return to personnel and that he never told her that there was a specific job available to which she could return. At the time of her resignation Dodson told Sanford that the matter of the unlawful screening on employees had been cleared up and Taylor's instructions to her remanded. Whereupon Sanford said she could not work with Taylor. When Dodson said no other positions were available, she handed him her resignation. She never retracted this position that she could not work with Taylor. Taylor was still industrial relations manager in September. Further, the quality control circle program was not instituted until sometime in November and she refused Dodson's offer of a temporary filing position. The General Counsel adduced no evidence that there were in fact any office positions available that Sanford could have filled on September 2 or 4. I do not find it so illogical that Dodson never considered offering her a plant production position as to raise an inference of unlawful motivation. There is no evidence that a transfer from a salaried position to an hourly position was usual in Respondent's operations nor is there any evidence that Sanford ever indicated during her conversations with Wilson, or at any other time, that she would consider an hourly paid, nonoffice job in the plant.

In all the circumstances, I conclude that the evidence is insufficient to establish that Respondent failed to assign Sanford to a job at the Sparks facility upon her return from Oakland for an unlawful reason or for any reason other than that asserted by Respondent—that there was no position available at that time for which she was qualified. Accordingly, I find that Respondent did not violate Section 8(a)(1) and (3) of the Act by discharging Sanford as alleged in the consolidated complaint.

### IV. THE OBJECTIONS

As set forth above, the Union filed timely objections to the election. The Steelworkers objections are as follows:

> 1. The Employer, by its officials and agents threatened employees because of their support for Petitioner.
>
> 2. The Employer, by its officials and agents promised certain benefits to discourage employees from supporting Petitioner.
>
> * * * * *
>
> 4. The Employer, by its officials and agents changed the duties and working conditions of supporters of Petitioner to discourage support for Petitioner.
>
> 5. The Employer, by its officials and agents sponsored a free barbecue for employees, and awarded free prizes to employees on August 27, 1980, within 24 hours of the election, thus destroying the laboratory conditions of the election.
>
> * * * * *
>
> 7. By the foregoing and other unlawful conduct, the Employer, by its officials and agents, destroyed the necessary laboratory conditions and interfered with the holding of a free and fair election among the Employer's employees August 28, 1980, and such unlawful conduct substantially and materially affected the outcome of the election. Accordingly, the election must be set aside.

The Machinists objections state:[21]

1. Commencing after June 11, 1980, the Employer established a new position at the Plant and selected the key day shift I.A.M. in-plant organizer to fill that position, resulting in his loss of effectiveness. (See #1)[22]

* * * * *

3. Commencing after June 11, 1980, the Employer intimidated, threatened and coerced its employees by mailing an official Company letter to the employees' homes. (See #3)

* * * * *

5. Commencing after June 11, 1980, the Employer in the person of Jack Watson, during a speech to a captive audience of his hourly employees [threatened and intimidated] the employees.

6. Commencing after June 11, 1980, the Employer caused copies of a Memo dated August 18, 1980, which was directed to the salaried employees of the Company to conspicuously appear in work areas of employees under Petition, resulting in again their being threatened and intimidated. (See #6)

* * * * *

8. Commencing after June 11, 1980, the Employer provided for the first time in its history "Free Employee Appreciation Day Bar-B-Q," two days before the election, resulting in the attending employees being given thousands of dollars worth of *Free Gifts*. (See #8)

* * * * *

10. On August 25, 1980, three (3) days prior to the election, the Employer suspended MR. JOHN S. RICKETTS for five (5) days beginning on August 25, 1980, MR. RICKETTS was identified to the Employer as a key I.A.M. Swing Shift In-Plant Organizer.

11. Commencing on June 11, 1980, the Employer began *re*evaluating hourly paid employees who prior to that date and up to the date of the election, had been denied any pay raise resulting from their poor evaluations, the results of this "Change of Heart" review provided numerous hourly employees with pay increases prior to the Board election.

12. The Regional Director of the 32nd Region, required in his letter of July 18, 1980, that, the *Excelsior* list to be filed timely must have been received by the 32nd Region on or before July 28, 1980. The *Excelsior* list, in this matter, was received by the 32nd Region, at 11:17 a.m., August 1, 1980. I.A.M. Regional Office did not receive a copy of List until August 4, 1980, as a result of late filing with the Regional Director.

I have found above that Respondent committed unfair labor practices by threatening employees that if they selected either of the Unions as their collective-bargaining representative an economic strike was inevitable and all strikers would be immediately and permanently replaced, by threatening employees with sale of the plant, loss of jobs, and plant closure if they selected either of the Unions as their collective-bargaining representative, and by the Employee Appreciation Day and raffle held on the day prior to the election. Since the Steelworkers Objections 1, 5, and 7 and the Machinists Objections 3, 6, and 8 are based, in whole or in part, on this conduct, I shall recommend that the Steelworkers Objections 1, 5, and 7 and the Machinists Objections 3, 6, and 8 be sustained insofar as they are based on conduct directed toward unit employees which I have heretofore found to be violative of the Act.[23] Further, in view of my conclusions above as to other alleged conduct, I shall recommend that the Steelworkers Objections 2 and 4 and the Machinists Objections 1, 5, 10, and 11 be overruled.

With regard to the Machinists Objection 12 concerning the late receipt of the *Excelsior* list, the parties stipulated that the *Excelsior* list was due on July 28, but that it was not received in the Regional Office until August 1 and was received by the Machinists on August 4. The parties further stipulated that on about July 25, Jana Jarvis and Dodson prepared the *Excelsior* list so that Taylor, who lives in San Francisco, could take the list with him and mail it in San Francisco. By inadvertence, it was left at the plant. When Taylor arrived in San Francisco, he instructed a night superintendent to place the envelope in the mail which was done at approximately midnight on July 25. Thereafter, during the following week, Respondent was advised by the Regional Office that the *Excelsior* list had not been received, whereupon another copy of the *Excelsior* list was placed in the mail. Since Respondent mailed the list on July 25 which, even considering the midnight mailing, was a minimum of 2 days prior to the due date and, since the Union received the list 24 days prior to the election, and in the absence of an affirmative showing to the contrary, I find that the Union was afforded sufficient opportunity to communicate with employees prior to the election. I therefore conclude that the Employer substantially complied with the requirements of the *Excelsior* rule. Accordingly, I recommended that the Machinists Objection 12 be overruled.

I have found above that certain conduct described in the Steelworkers Objections 1, 5, and 7 and the Machinists Objections 3, 6, and 8 constitute unfair labor practices which occurred within the critical period. I further

[21] Inadvertently, the Machinists objections and the Steelworkers partial withdrawal of its objections were not offered into evidence during the course of the hearing herein as part of the formal documents. Upon the motion of the General Counsel, these documents are hereby received into evidence as G.C. Exhs. 2(n) and 2(o), respectively.

[22] There is no explanation in the record of what is meant by the parenthetical references contained in the Machinists objections.

[23] Although I found the threat of plant closure made by Taylor to Sanford was violative of the Act, I do not find it to be objectionable conduct which affected the result on the election since she was not in the unit and there is no evidence that she related the incident to other employees.

find that such conduct interfered with the exercise of the employees' free and untrammelled choice in the election held on August 28, 1980. Accordingly, I recommend that said election be set aside and that a new election be conducted at a time and place to be determined by the Regional Director.

### CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.
2. The Steelworkers and the Machinists each is a labor organization within the meaning of Section 2(5) of the Act.
3. Respondent has interfered with, restrained, and coerced employees in violation of Section 8(a)(1) of the Act by threatening employees with possible sale of the plant, loss of jobs, plant closure, and the inevitability of a strike and the immediate and permanent replacement of all strikers if they selected either of the Unions as their collective-bargaining representatives; and by sponsoring the Employee Appreciation Day highlighted by a raffle of prizes of substantial value on the day preceding the election.
4. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.
5. As alleged in the Steelworkers Objections 1, 5, and 7 and the Machinists Objections 3, 6, and 8, the aforesaid conduct of Respondent, which has been found to constitute unfair labor practices within the critical period, has interfered with the employees' exercise of a free and untrammeled choice in the representation election held in Cases 32-RC-1085 and 32-RC-1095 on August 28, 1980.
6. The evidence does not establish that Respondent has engaged in any unfair labor practices or objectionable conduct which affected the results of the election except as set forth above.

### THE REMEDY

Having found that Respondent has engaged in certain unfair labor practices, I shall recommend that Respondent cease and desist therefrom and take certain affirmative action in order to effectuate the purposes of the Act.

Upon the basis of the foregoing findings of fact and conclusions of law, and upon the entire record in this proceeding, and pursuant to Section 10(c) of the Act, I hereby recommend the following:

### ORDER[24]

The Respondent, Grove Valve and Regulator Company, Sparks, Nevada, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Threatening its employees with possible sale of its plant, loss of jobs, plant closure, and the inevitability of a strike resulting in the immediate and permanent replacement of all strikers, if they selected either of the Unions as their collective-bargaining representative.

(b) Sponsoring a day of food and entertainment including a raffle of prizes of substantial value, so as to induce employees to withdraw or withhold their support from a union.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of rights guaranteed in the Act.

2. Take the followihg affirmative action necessary to effectuate the policies of the Act:

(a) Post at its place of business in Sparks, Nevada, copies of the attached notice marked "Appendix."[25] Copies of said notice, on forms provided by the Regional Director for Region 32, after being duly signed by its authorized representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(b) Notify the Regional Director for Region 32, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

IT IS FURTHER RECOMMENDED that the Steelworker Objections 2 and 4 and the Machinists Objections 1, 5, 10, 11, and 12 be overruled, that the Steelworkers Objections 1, 5, and 7 and the Machinists Objections 3, 6, and 8 be sustained and that the election held on August 28, 1980, be set aside and a second election by secret ballot be conducted among the employees in the appropriate unit at such time and manner as the Regional Director deems appropriate.

[24] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

[25] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

## APPENDIX

### NOTICE TO EMPLOYEES
### POSTED BY ORDER OF THE
### NATIONAL LABOR RELATIONS BOARD
### An Agency of the United States Government

After a hearing at which the parties were represented by their attorneys and presented evidence in support of their respective positions, it has been found that that we have violated the National Labor Relations Act in certain respects and we have been ordered to post this notice and to carry out its terms.

The National Labor Relations Act gives all employees the following rights:

To organize themselves
To form, join, or support unions

To bargain as a group through a representative they choose

To act together for collective bargaining or other mutual aid or protection

To refrain from any or all such activities.

In recognition of these rights, we hereby notify our employees that:

WE WILL NOT threaten employees with possible sale of our plant, loss of jobs, or plant closure if they select a union as their collective-bargaining representative.

WE WILL NOT threaten employees with the inevitability of a strike and the immediate and permanent replacement of all strikers if they select a union as their collective-bargaining representative.

WE WILL NOT sponsor an employee appreciation day of food and entertainment including a raffle with prizes of substantial value, in a manner so as to induce our employees to withdraw or withhold their support from a union.

GROVE VALVE AND REGULATOR COMPANY